Notification substituting Rule 96(10) will have 'prospective' effect – Gujarat HC

25 September 2024

Summary

The Gujarat High Court (HC), in its initial judgement in Cosmo Films Limited[1] (CAV judgement), had held that Notification No. 54/2018-CT (impugned notification), which substituted Rule 96(10) (impugned rule) of the Central Goods and Services Tax Rules 2017 (CGST Rules), will be applicable retrospectively from 23 October 2017, despite specifying the effective date of 9 October 2018.

In the review proceedings against the CAV judgement, the court has rectified the error, stating that the notification came into effect on 9 October 2018 and cannot be given the retrospective effect from 23 October 2017. Additionally, the HC deleted the erroneous observations that the impugned rule provides exemption to AA license holders and excluded references to the explanation to Rule 96(10)[2], which should not have been accounted for, considering it was issued after the conclusion of arguments.

Facts of the case

- Cosmo Films Limited (the applicant) is the holder of AA licenses granted under the Foreign Trade Policy 2015-2020 (FTP). The applicant had initially challenged the constitutional validity of Rule 96(10) of the CGST Rules, along with several notifications that amended the rule, specifically Notification No. 54/2018-CT dated 9 October 2018, which finally substituted the impugned rule with effect from 9 October 2018.
- In the writ proceedings[3], apart from upholding the rule's validity, the HC held that the rule would be applicable retrospectively from 23 October 2017, resulting in numerous notices from the Directorate of Revenue Intelligence (DRI) to recover the IGST from 23 October 23 2017.
- The applicant has filed a review application against the CAV judgement, considering the various mistakes apparent on record.

Submissions of the applicant

- There was no ambiguity on the prospective application of the substituted rule since the impugned notification specifically provided the effective date of 9 October 2018. Accordingly, the CAV judgement was incorrect to the extent it gave a retrospective application to the impugned notification from 23 October 2017[4].
- The rule does not exempt AA license holders from the levy of customs duties and the IGST, as specified in the CAV judgement; it merely restricts the option of claiming a rebate.
- Although the rule was initially inserted with effect from 23 October 2017[5], it was amended/demerged vide the impugned notification effective from 23 October 2023, indicating the prospective intention.
- Furthermore, it has been wrongly stated in the CAV judgement that the impugned rule imposes a restriction on the exporter claiming the IGST refund if the supplier has imported duty-free goods[6] when the restriction is imposed when the exporter himself has imported duty-free goods.

[1] R/SCA 15833/2018
[2] Notification No. 16/2020-CT dated 23 March 2020
[3] Judgement dated 20 October 2020
[4] Para. 4.5 of the CAV judgement
[5] Notification No. 39/2018-CT dated 4 September 2018
[6] Para. 8.5 of the CAV judgement

- Considering the amendment in the impugned rule, the applicant subsequently paid the IGST to import goods for export purposes. Accordingly, the applicant would be entitled and eligible for a rebate under Rule 96(10) to the extent of such payment.
- The CAV judgement incorrectly considered the explanation of Rule 96(10), despite the conclusion of arguments prior to such insertion.

Gujarat HC's observations and judgement [Misc. Civil Application (For Review) No. 1/2020 dated 19 September 2024]

Impugned notification will have a 'prospective' effect

- The impugned notification categorically specifies the effective date as 9 October 2018 and cannot be given retrospective effect from 23 October 2017 or 1 July 2017. Acknowledging the apparent error, all references to either date in the CAV judgement have been deleted, thereby ruling out the retrospective effect of the notification.

Rule only restricts rebate and does not provide exemption

- The HC also accepted that Rule 96(10) only restricts the rebate option, and does not provide any exemption as incorrectly recorded. Acknowledging the apparent error, the HC also deleted such incorrect observation from the CAV judgement.

'Explanation' to Rule was inserted after conclusion of arguments and cannot be considered in the judgement

- The HC noted that the explanation specifying that a restriction would not be applicable in cases where the exporters have only availed an exemption of the basic customs duty (BCD) was inserted after the conclusion of arguments, and even theorder was reserved. Accordingly, deliberation on the explanation should not have formed part of the CAV judgement and should be deleted.

Our comments

In view of the HC's initial judgement, the Directorate of Revenue Intelligence (DRI) had issued numerous notices for recovery of the IGST, along with interest on duty-free imports under the AA scheme or refund of the IGST paid on exports along with interest, for the intervening period (from 23 October 2017 to 9 October 2018).

As a result of the HC's clarification, any recovery notices issued for the intervening period, based on the erroneous earlier date, might not be enforced, and the demands for IGST recovery during that period are expected to be withdrawn or nullified. This ensures exporters are not liable for IGST recovery for the earlier period under the corrected legal framework.

Additionally, the exporters who had claimed IGST refunds based on the earlier ruling will now be protected from interest and penalty implications linked to this period, avoiding undue liability.

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