Tax alert: Supreme Court holds omission of Rule 96(10) of the CGST Rules applicable to pending proceedings

13 August 2026

Rule 96(10) of the CGST Rules 2017, provided for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain specified concessional/exemption notifications were availed on goods imported or procured domestically. Considering the litigation around interpretation of the subject rule, the GST Council vide its 54th meeting dated 9 September 2024, had recommended the removal of the subject provision. Vide this decision, the Hon'ble Supreme Court has held that the omission of Rule 96(10) of the CGST Rules, 2017, applies to pending proceedings in the absence of a saving clause. With its deletion, such restrictions are no longer applicable. Accordingly, pending refund proceedings, including for periods prior to the deletion of Rule 96(10), are to be considered without applying the restrictions prescribed under the omitted Rule.

In a nutshell

Relying upon the principles laid down by the Constitution Bench, the Hon'ble Supreme Court held that proceedings under an omitted rule can continue only where there is a specific provision or legal mechanism creating a fiction for their continuance.

Omission of Rule 96(10) being without any saving clause or sunset clause, applies to all proceedings pending as on the date of its omission. The restrictions under the omitted rule shall not continue to apply to such proceedings.

The intention to omit the rule without any saving clause was to end the unnecessary complications once and for all and not to keep it alive for the pending proceedings.

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Background:

- The present case[1] consisted of a batch of petitions wherein the challenge is by Revenue against the judgment of the Gujarat High Court which had held that the omission of Rule 96(10) of the CGST Rules, 2017 would also apply to proceedings pending as on the date of its omission.
- Rule 96(10) was omitted by Notification No. 20/2024-Central Tax with effect from 08 October 2024. It provided for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, were availed on goods imported or procured domestically.
- The Gujarat High Court had held that although the omission was prospective in operation, in the absence of any saving clause, it would apply to pending proceedings/cases where final adjudication had not taken place.
- The key issue before the Supreme Court was whether the omission of Rule 96(10) would benefit the taxpayers in pending proceedings, enabling their refund claims to be considered without applying the restrictions under the omitted Rule.

Supreme Court Judgement:

- Relying on its Constitution Bench decision[2], the Supreme Court upheld the judgment of the Gujarat High Court and held that the omission of Rule 96(10) of the CGST Rules, 2017 would apply to all proceedings pending as on the date of its omission, in the absence of any saving clause.
- The Constitution Bench had held that Section 6 of the General Clauses Act which is a saving clause is applicable to a repeal by a Central Act or Regulation and would not be applicable to the omission of a Rule. Accordingly, proceedings under an omitted Rule can continue only where there is a specific provision or legal mechanism creating a fiction for their continuance.
- Applying this principle to the present case, the Supreme Court noted that Rule 96(10) was omitted without any saving clause or sunset clause.
  - The recommendation as per the 54th GST Council meeting minutes that the omission should be prospective is merely advisory in nature and does not bind the rule making authority.
  - The intention to omit the rule without any saving clause was to end the unnecessary complications once and for all and not to keep it alive for the pending proceedings.
- Directions were issued to send a copy of the order to all High Courts so that the pending proceedings on this issue could be brought to closure.

Comments:

Due to the restrictions under Rule 96(10) read with Rule 89(4A) and 89(4B) of the CGST Rules, the taxpayers having eligible credit balances in their Input Tax credit ledgers which may be pertaining to capital goods or other inputs / input services or transitional credit, were not able to claim refund of the same. The Supreme Court's ruling settles the controversy on the applicability of the omission of Rule 96(10) to all pending proceedings which may include refund proceedings for periods prior to 8.10.2024 (i.e., date of omission of Rule 96(10)). Such matters would have to be examined without applying the restrictions mentioned in the omitted rule, subject to satisfaction of the other applicable provisions. The decision would also bring finality to the pending cases on this issue. Also, it gets reinforced that deletion/ amendment of rules without specific saving clauses, would apply to all pending proceedings irrespective of the period to which they pertain.

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[1] Goodluck India Limited & Anr. vs Union of India & Ors. 2026-VIL-75-SC

[2] Kolhapur Canesugar Works Ltd. v. Union of India 2000-VIL-29-SC-CE