HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 20798/2025
CNR: RJHC021135582025 | URN: CW / 45898U / 2025

M/s. Ut Corp, S-1, Kamal Apartment, Near Ram Mandir Bani Park Jaipur, Rajasthan, 302016 Through Its Partner Mr. Alpesh Rawat S/o Shri Ram Prakash Rawat.

----Petitioner

Versus

1. Union Of India, Through Secretary, Finance Department, Government Of India, New Delhi
2. The State Of Rajasthan Throughchief Commissioner, State Goods And Service Tax, Kar Bhawan, Ambedkar Circle Jaipur
3. The Chief Commissioner, Central Goods And Services Tax, Statue Circle, C Scheme, Jaipur.
4. The Assisstant Commissioner Central Goods And Services Tax, Division -C, Vki Area, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Pankaj Ghiya with Mr. Mayank Vyas
For Respondent(s)	:	Mr. Vigyan Shah, Sr. Advocate assisted by Mr. Deepak Mittal Mr. Ajay Shukla with Mr. Raghav Sharma, Ms. Jyoti Sharma & Mr. Shivam Sharma Mr. CS Sinha with Mr. Dev Yadav & Mr. Mayank Kamwar

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HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE SAMEER JAIN

Order

26/10/2026

1. In this petition, the petitioner has questioned the constitutional validity of Rule 96(10) of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'the Act of

2017') as amended by Notification No.03/2018-CT, dated 23.01.2018 with retrospective effect from 23.10.2017 and further amended by Notification No.53/2018-CT dated 09.10.2018, to the extent it denies refund of IGST paid on exports where the supplier has availed the benefit of Notification No.41/2017-IGST.

2. When the matter is taken up for hearing, learned counsel for the parties have brought the decision of the Supreme Court to our notice in the matter of **M/s Goodluck India Limited & Anr. Vs. Union of India & Ors.**[1], in which their Lordships have considered the issue regarding the omission of Rule 96(10) of the Act of 2017, to be applicable to every proceedings as on the date of its omission and has held in paras 3 to 8 as under:

> "3. The issue arising is whether sub-rule (10) of Rule 96 as omitted by Notification No.20/2024 with effect from 08.10.2024 would inure to the benefit of the assessee in the pending proceedings, wherein there was a claim of refund of integrated tax paid on goods and services exported out of India, to be considered without the restriction under sub-rule (10) being applied. The sub-rule having been omitted, suffice it to notice that the applicability of refund under Rule 96 was without the rigor of the person claiming such refund, having received supplies after availing benefits available by virtue of the notifications specified in clause (a) or the benefits available under the notifications specified under clause (b). The sub-rule having been omitted without a saving clause it applies squarely to all the proceedings pending, is the contention of the assessees, which was sought to be resisted by the learned Additional Solicitor General appearing for the Union of India.
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> 4. Sri S. Dwarakanath, learned ASG took us to the minutes of the 54th meeting of the GST Council held on 09th September, 2024 at New Delhi, fairly conceding that the recommendation is only advisory and it is not mandatory to accept it. In any event the recommendation reads as under, insofar as the omission of Rule 96(10) is concerned:
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> > "The Law Committee observed that operation of rule 96(10) is leading to unnecessary complications without any intended benefit being served and therefore recommended that rule 96(10), rule 89(4A) & rule 89(4B) of the CGST Rules, 2017 may be omitted with prospective effect and that consequential amendments in clause (b) of sub-rule (4B) of rule 86, clause B, clause C and clause E of sub-rule (4) of rule 89 and Explanation (a) to sub-rule (5) of rule 89 of CGST Rules may be made."

1 Special Leave Petition © No.24550 of 2025

The emphasis on the recommendation is to persuade us to apply it prospectively only, as the Council visualised it, in so far as its application is concerned.

5. The learned Senior Counsel appearing for the respondents on the other hand, relies on **Kolhapur Canesugar Works Ltd v. Union of India**. Therein the question raised was the refund demanded under Rule 10A of the Central Excise Rules, 1944, which though prevalent at the time of issuance of show cause notice, before the final order was passed, it stood omitted. The newly brought in rule did not have provision for enforcing such refund. It was argued for the Department that the introduction of Section 11A, created a fiction by virtue of which proceedings under Rule 10 are deemed to be proceedings under Rule 11A of the Act. The trite principle in common law that the effect of repealing a statute or deleting a provision, is to obliterate it from the statute book, as completely as if it had never existed was highlighted by this Court. An exemption, as engrafted by the provisions of Section 6 of the General Clauses Act; though Section 6 was held to be not applicable in the given circumstances of omission of a rule, should have been incorporated as a saving clause to facilitate continuance of pending proceedings despite the omission, failing which all actions would come to a stop when the omission is given effect. It was held so under paragraph 36

> "36. In the case in hand Rule 10 or Rule 10-A is neither a "Central Act" nor a "regulation" as defined in the Act. It may be a Rule under Section 3(51) of the Act. Section 6 is applicable where any Central Act or regulation made after commencement of the General Clauses Act repeals any enactment. It is not applicable in the case of omission of a "rule".

6. It was held by the Constitution Bench that if on omission of a rule, there was a provision for continuance of the proceedings already initiated or if by incorporation of a provision in the statute there was a legal device adopted, creating a fiction by virtue of which proceedings under the omitted rule could be continued; only then proceedings initiated under the omitted rule could be continued.

7. The Constitution Bench decision applies squarely in the above case. We may also observe that even going by the recommendations as extracted hereinabove, sub-rule (10) of Rule 96 was omitted because it was 'leading to unnecessary complications without any intended benefit being served' (sic). As fairly submitted by the learned ASG the legislature has not brought in any saving clause or a sunset clause, when sub-rule (10) of Rule 96 was omitted. The recommendation that the omission should be prospective is also advisory in nature and does not bind the rule making authority. The intention to omit the rule without any saving clause was to bring to an end, the unnecessary complications once and for all and the intention cannot be to keep alive the unnecessary complications insofar as the pending proceedings are concerned.

8. We find no good reason to interfere with the well-reasoned judgment of the High Court. We are told that there are many proceedings pending before the various High Courts and conflicting decisions have also been passed. We hope that such proceedings would get closure with this judgment."

3. The Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes has also issued Office Memorandum dated 24.08.2026 and accepted the judgment of the

Supreme Court in **M/s Goodluck India Limited** (supra). The said Office Memorandum reads as under:

"**OFFICE MEMORANDUM**

Subject: Hon'ble Supreme Court judgment dated 06.08.2026 in the matter of M/s Goodluck India Limited & Anr. v. Union of India & Ors. in respect of prospective omission of rule 96(10) of the CGST Rules, 2017-reg.

The undersigned is directed to refer to the email received from the Legal Cell, CBIC, dated 19.08.2026, requesting the examination of the judgment dated 06.08.2026 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 24550 of 2025, in the matter of M/s Goodluck India Limited & Anr. v. Union of India & Ors.,[2026 (8) TMI 719 - Supreme Court] along with other connected matters, in which it has been held that in the absence of any saving clause accompanying the omission of rule 96(10) of the CGST Rules, 2017, the said omission applies to all proceedings pending as on the date of omission.

1.2. The Hon'ble Court has further observed that sub-rule (10) of rule 96 was omitted as it was "leading to unnecessary complications without any intended benefit being served," and that the recommendation for the omission to be prospective is advisory in nature and does not bind the rule-making authority. Accordingly, the restrictions contained in rule 96(10) cannot be applied to pending proceedings arising out of the omission of the said rule.

1.3. It is noted that the Hon'ble Supreme Court has relied upon the Constitution Bench judgment in Kolhapur Canesugar Works89 Ltd. v. Union of India [(2000) 2 SCC 536] = 2000 (2) TMI 823 - Supreme Court, wherein it was held that section 6 of the General Clauses Act, 1897 does not apply to the omission of a rule. The Hon'ble Court reiterated that, where a rule is omitted, pending proceedings can continue only where there is an express provision for their continuance, or a legal device has been incorporated in the statute/rules to preserve such proceedings. Similar opinion was also given by the Ld. Additional Solicitor General in an earlier reference on the matter.

2. It is also pertinent to note that following the judgement of the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd., saving clauses were incorporated in the Central Excise Act, 1944 and the Customs Act, 1962, by insertion of section 38A with retrospective effect from 28.02.1944, and section 159A with retrospective effect from 01.02.1963, respectively, vide the Finance Act, 2001. This was done in order to prevent any amendments or omissions in rules, regulations etc. from extinguishing any existing rights or ongoing legal cases. In the absence of such a clause in respect of the GST law, omission of a rule in essence takes retrospective effect.

3. Thus, in view of the judgment of the Hon'ble Supreme Court and the discussion above, this office is of the view that the judgment dated 06.08.2026 in the matter of M/s Goodluck India Limited & Anr. v. Union of India & Ors. [2026 (8) TMI 719 - Supreme Court] may be accepted.

4. This issues with the approval of Member (GST), CBIC.

(Kriti Pandey)

Under Secretary, GST Policy Wing"

4. As such, the instant writ petition is disposed of in terms of paras 7 & 8 of the judgment passed by the Supreme Court in **M/s Goodluck India Limited** (supra) and the office memorandum dated 24.08.2026.

5. However, the petitioner is at liberty to file appropriate application(s) for refund, if any, before the competent authority, who will consider the application(s) strictly in accordance with law and decide the same within a period of twelve weeks.

6. It is clarified that no prejudice be caused to the petitioner on account of the impugned orders or any erstwhile orders; and the respondents are directed to decide the refund application of the petitioner afresh.

7. Pending application(s), if any, also stands disposed of.

(SAMEER JAIN),J (SANJAY K. AGRAWAL),CJ

NAVAL KISHORE/RAHUL/5