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Omission of Rule 96(10) of CGST Rules 2017 without a “Saving Clause”: Ease of doing business or the Legislative Oversight

The article examines the omission of Rule 96(10) of the CGST Rules, 2017, which earlier restricted IGST refunds for certain categories of exporters availing specified exemption benefits. Several taxpayers had challenged the validity of Rule 96(10) before various High Courts,

contending that the rule was ultra vires the GST law. Subsequently, the Government omitted Rule 96(10) vide Notification No. 20/2024-Central Tax dated 8 October 2024. However, questions arose regarding the fate of pending litigations where exporters had availed IGST refunds allegedly in contravention of Rule 96(10). The article analyses judicial rulings that emphasized the absence of a “saving clause” in the omission notification and discusses how courts interpreted such omission to determine its impact on ongoing proceedings and pending disputes.

The Goods and Services Tax (GST) regime, a landmark tax reform in India, has been in a constant state of evolution since its inception on July 1, 2017. The government, with time, has constantly brought changes through GST council meetings to ensure simplicity and, at the same time, maintain the revenue targets and curb any revenue leakages. While most legislative changes are aimed at simplification and easing compliance, a recent omission of a key rule has created a significant legal and financial ripple, positively affecting exporters across the country.

The 54th GST council meeting held on 9th September 2024 recommended that rule 96(10) of CGST Rule 2017 be omitted prospectively. The minutes of the meeting did not specify anything related to existing demand/notices pertaining to rule 96(10) of the CGST Rules, 2017. Pursuant to the recommendation of the GST council meeting, notification No. 20/2024 – Central Tax dated 8th October 2025 was issued to omit Rule

96(10) entirely. The unconditional removal of Rule 96(10) of the Central Goods and Services Tax (CGST) Rules, 2017, without the inclusion of a saving clause, has become the central point of contention in several high-profile legal battles. This article will meticulously examine the critical role and features of a saving clause, the fundamental legal principle it embodies, and provide a detailed analysis of how two landmark rulings by the Calcutta and Gujarat High Courts have leveraged this very principle to grant substantial relief to exporters with pending disputes.

Before we delve into the principles of the Saving Clause and analysis of observations made by the Hon'ble High Courts, a quick summary of Rule 96(10) is as follows:

Rule 96 of the CGST Rules 2017 provides for rules governing the refund of Integrated Goods and Services Tax (“IGST”) on goods or services exported outside India. Sub-rule 10 of Rule 96 provided that certain

taxpayers will not be eligible to avail a refund of IGST paid on export of goods or services. These taxpayers included importers who have availed the benefit of IGST exemption at the time of import of materials (Advance license holders, EOU units, etc.). These categories of taxpayers were required to export under LUT and claim a refund of unutilised ITC under Rule 89 of the CGST Rules, 2017. However, Rule 89 of the CGST Rules restricted the refund of ITC on capital goods. This had led to a significant financial impact on exporters.

Certain exporters, who have imported goods with exemption of IGST, have exported with payment of IGST and received IGST refund. Government authorities in such cases had initiated demand proceedings along with interest and penalty.

Various petitions were filed with the court to determine Rule 96(10) as ultra vires to the GST law. With a number of High Court petitions across the country and repeated representations

by the exporters, the government brought up a welcome move to omit Rule 96(10), albeit prospectively. The council meeting and subsequent notification were completely silent on pending proceedings with respect to Rule 96(10). The notification unconditionally omitted Rule 96(10) from the CGST Rules 2017 without any saving clause for pending proceedings.

Having briefly gone through Rule 96(10) and relevant issues, we will first delve into the principle of the saving clause and then discuss observations made by two Hon'ble High Courts in this regard.

Part I: The Core Legal Principle - The Imperative of a Saving Clause

A saving clause is not a mere formality; it is a crucial provision in legal drafting, particularly when a statute or rule is being repealed, amended, or omitted. Its fundamental purpose is to preserve the *status quo ante*, to ensure that the repeal does not retroactively affect rights, liabilities, or legal proceedings that arose under the old law. The concept is deeply rooted in the legal principle of "obliteration," which states that when a law is repealed or omitted, it is treated as if it never existed on the statute books. This is a powerful doctrine of statutory interpretation. The only way to prevent this "blotting out" effect is through an explicit saving provision.

The Doctrine of Obliteration and Its Judicial History

The legal position on this matter has been crystallized by the Supreme Court of India in the landmark case of *Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors.* (2000). The Hon'ble Supreme Court, while interpreting a similar repeal in the context of the Central Excises Act, held that when a rule is omitted, it is as if it "had never been passed, and the statute must be considered as if the rule had never existed." The court further clarified that the only way to counter this legal effect is with an

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explicit saving clause. This precedent established a clear legal position: in the absence of a saving clause, all actions must stop where the repeal finds them. This principle became the foundation for the subsequent High Court rulings.

The General Clauses Act, 1897, provides a general saving clause for the repeal of any Central Act or Regulation. Section 6 of this Act, in particular, states that unless a different intention appears, the repeal shall not affect any legal proceeding, right, privilege, or liability that was accrued under the repealed law. However, as the High Courts would later find, this general provision does not automatically apply to the "omission" of a rule, which is a different legal mechanism from a full-fledged "repeal" of an Act. This nuance is central to the entire issue.

Part II: The Legislative Action - Omission of Rule 96(10)

Rule 96(10) of the CGST Rules, 2017, was a source of widespread discontent among exporters. It was a restrictive provision that placed a significant hurdle on exporters by denying them the refund of Integrated Goods and Services Tax (IGST) paid on their exports. The condition was that an exporter could not claim this refund if they had availed benefits under

specific customs duty exemption notifications on their inward supplies, such as the Advance Authorization Scheme / EOU. The intent behind the rule was to prevent a "double benefit," but in practice, it often led to a disproportional denial of refunds, even if the value of the exempted inputs was minuscule.

Recognizing the hardship it caused, the government, on the recommendation of the GST Council, decided to omit Rule 96(10). The omission was carried out through Notification No. 20/2024-Central Tax dated October 8, 2024, without any accompanying saving clause. This legislative omission, while intended to be a positive step, created a legal vacuum and immediately brought the principle of "obliteration" to the forefront of litigation. Tax authorities, presuming that their pending notices and assessments were still valid, continued to pursue cases against exporters, setting the stage for the two landmark High Court rulings.

Part III: Judicial Intervention - The Landmark High Court Judgments

The failure / intentional omission of the legislature to include a saving clause presented a critical opportunity for the judiciary to clarify the legal position and provide relief to taxpayers. Both the Hon'ble Calcutta High Court and the Hon'ble Gujarat



High Court seized this opportunity, and their rulings have provided a powerful and consistent precedent.

Calcutta High Court in vs. M/s. Glen Industries Private Limited

In the case of M/s. Glen Industries Private Limited & Anr. v. The Deputy Director, Directorate General of GST Intelligence & Ors., the petitioner was an exporter of plastic containers who had been issued a show-cause notice while Rule 96(10) was still in force. The notice was for the recovery of an alleged erroneous refund of approximately Rs. 1.96 crore. The final order confirming the tax demand, however, was passed on January 30, 2025, a date subsequent to the rule's omission on October 8, 2024.

The Hon'ble Calcutta High Court, in its judgment dated March 26, 2025, meticulously analyzed the legal arguments. The petitioner's counsel, relying heavily on the Supreme Court's pronouncements in the Kolhapur Canesugar Works case, argued that the omission of the rule effectively removed the very legal foundation for the show-cause notice and all subsequent proceedings. The court agreed with this line of reasoning. It held that the omission of a subordinate legislation, like a rule, has the same effect as a repeal. The court stated that since the rule was "unconditionally omitted" and

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not “repealed and re-enacted” with a saving clause, the legal basis for the administrative action was gone.

The Hon'ble High Court clearly provided that *“In a case where a particular provision is omitted and in its place another provision dealing with the same contingency is introduced without the saving clause in favour of the pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.”*

This judgment was a watershed moment, providing judicial confirmation that administrative authorities cannot pass orders invoking a provision that has been removed from the statute book, even if the proceeding was initiated when the rule was in force.

Gujarat High Court in Messrs Addwrap Packaging Pvt. Ltd.

The Gujarat High Court, faced with a similar set of facts in the case of Messrs Addwrap Packaging Pvt. Ltd. & Anr. v. Union of India & Ors., echoed a similar view and delivered a judgment that further solidified the legal position. The petitioners in this case also had pending refund disputes where the IGST refund was denied based on the now-omitted Rule 96(10). It may be noted that in the present order, more than 100 special civil applications were clubbed to pass an order pertaining to Rule 96(10) of the CGST Rules 2017.

The Gujarat High Court's ruling, dated June 13, 2025, was more comprehensive in its reasoning. While the court was initially poised to rule on the constitutional validity of Rule 96(10), the Government's omission of the rule made this question academic. The Court then pivoted its entire analysis to the legal effect of the omission. It was observed that the Government's notification stated the rules “shall come into force on the date of their publication,” which is a prospective application. However, the court astutely distinguished between the prospective effect of a law and the retrospective effect of its repeal.

The court relied on Sections 6, 6A, and 24 of the General Clauses Act, 1897. It held that while Section 6 provides a general saving clause for the repeal of an “enactment,” the omission of a rule is not a full-fledged repeal. However, by interpreting the term “repeal” broadly and by applying the doctrine from the Kolhapur Canesugar Works case, the Court concluded that the intent of the legislature was to make the provision inoperative from the date of its omission. The Court unequivocally stated that the omission of the rule applied to all pending proceedings as of the date of its removal, where final adjudication had not yet taken place.

The Hon'ble Gujarat High Court, while concluding the matter, laid down that *“Therefore, we are of the opinion that Notification No.20/2024 dated 8th October, 2024 would be applicable to all the pending proceedings/cases meaning thereby that Rule 96(10) would stand omitted prospectively but applicable to pending proceedings/cases where final adjudication has not taken place.*

Therefore, in view of the foregoing reasons, the omission of Rule 96(10) would apply to all the proceedings/cases/petitions which are pending for adjudication either before this Court or before the respondent adjudicating authority, and no further proceedings are required to be carried forward and petitioners would be entitled to



maintain refund claims of IGST paid on export of goods.

The Hon'ble Gujarat High Court's judgment had a powerful two-fold impact:

1. It Quashed All Pending Proceedings:

The Court explicitly quashed all challenged show-cause notices, orders-in-original, and refund denials that were based on Rule 96(10), providing a direct remedy to the petitioners. The demand in cases, in which a show cause notice has been issued but an order has not been passed, or an OIO has been passed, but the matter has been challenged with a higher authority, has been ordered to be dropped altogether.

2. It clarified the Right to Refund:

The Court also affirmed the exporters' right to pursue their IGST refunds under the general framework of the GST law, effectively removing the obstacle created by the omitted rule. The Court emphasized that the right to refund had always existed under the parent Act, and the rule was merely a procedural restriction that had now been removed.



Part IV: The Broader Implications

The consistent rulings from the Calcutta and Gujarat High Courts have profound implications for GST law and administrative practice in India.

■ Legal Certainty for Taxpayers:

These judgments have established a strong legal precedent that taxpayers can now use to challenge any pending notices or demands based on a provision that has been unconditionally omitted from the GST rules. This has effectively "unlocked" long-pending IGST refunds for countless exporters, providing them with much-needed cash flow and relief from litigation.

■ A Reminder to Lawmakers:

The rulings are a clear signal to the Government and its legislative drafting bodies about the critical importance of including saving clauses when amending or repealing laws. This is essential for ensuring legal continuity and preventing unnecessary litigation. The absence of such a clause forces the judiciary to interpret the legal vacuum, often in favor of the taxpayer.

■ The Rule of Law and Judicial Activism:

These rulings also highlight the crucial role of the judiciary in acting as a check on legislative and administrative overreach. By meticulously applying established legal principles, the High Courts have upheld the fundamental rights of citizens. The rulings reinforce the principle that the law must be drafted with precision and foresight, and that in the absence of such prudence, the Courts will uphold the fundamental rights of citizens and the established doctrines of statutory interpretation.

Conclusion

In conclusion, the saga of Rule 96(10) is a potent case study. It may be interesting to wait and see the Government's action. The

government's future course of action may determine whether the unconditional omission of Rule 96(10) was a regulatory oversight or a genuine step to close all the litigations.

While concluding our analysis, it would be important to look forward to the following points in the future.

■ Whether the Government challenges the order passed by the Hon'ble Gujarat High Court and the Hon'ble Calcutta High Court in the Apex Court?

■ What would be the observation of the Hon'ble Supreme Court in this matter in case the matter is tabled before the Apex Court?

■ Will the Government come up with a circular / instruction to clarify their position for all the pending matters with respect to Rule 96(10)?

References

- Minutes of 54th GST Council Meeting
- Notification No. 20/2024 – Central Tax dated 8th October 2024
- Hon'ble Calcutta High Court order in the case of M/S. GLEN INDUSTRIES PRIVATE LIMITED & ANR. VERSUS THE DEPUTY DIRECTOR, DIRECTORATE GENERAL OF GST INTELLIGENCE & ORS. (2025 (4) TMI 492 - CALCUTTA HIGH COURT dated 26 March 2025)
- Hon'ble Gujarat High Court order in case of MESSRS ADDWRAP PACKAGING PVT. LTD. & ANR. Versus UNION OF INDIA & ORS pronounced on 13 June 2025

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