

Kerala High Court declares Rule 96(10) of GST Rules unconstitutional

Sance Laboratories Pvt. Ltd. v. UOI & Ors.¹

The Kerala High Court ('the Court') has the prayer in a set of writ petitions and declared Rule 96(10) of the Central Goods and Services Tax Rules 2017 ('CGST Rules') as *ultra vires* Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), and unenforceable due to its manifestly arbitrary nature.

Background of the case

- Several Petitioners comprising exporters who had previously claimed IGST refunds on exports, challenged Rule 96(10) of the CGST Rules, on the ground that it unjustly restricts their right to claim IGST refunds on exports, which they argued was contrary to the zero-rating principles in the IGST Act.
- Rule 96(10) restricts the refund of IGST paid on exports for exporters who have received inputs or supplies on which specified exemptions have been claimed. This Rule stands deleted w.e.f. October 8, 2024

Submissions by the Petitioners

- **Conflict with IGST Act's zero-rating provisions:** Petitioners argued that Rule 96(10) of the CGST Rules contradicts Section 16 of the IGST Act by restricting IGST refunds due to exporters who have

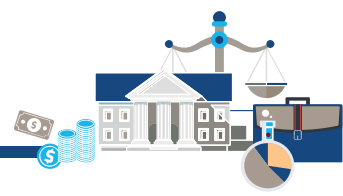
claimed benefits under certain specified (in the CGST Rules) notifications.

- **Unfair Classification of Exporters:** While Rule 89 allows exporters to claim refunds on unutilized input tax credit ('ITC') under a letter of undertaking ('LUT') without restrictions, Rule 96(10) limits refunds for those paying IGST on their exports, resulting in an unfair classification between exporters using LUT and those opting for IGST payments.
- **Principle of Legislative Intent:** Petitioners relied on several Supreme Court judgments, including *Shayara Bano v. Union of India*², to argue that subordinate rules must align with the intent of primary legislation. Thus, Rule 96(10) conflicting with Section 16 of the IGST Act is *ultra vires* and invalid.
- The Petitioners highlighted that Rule 96(10) leads to unintended and unjust outcome, leading to a situation not foreseen or intended by the legislature. Supreme Court's decision in *K.P. Varghese v. Income Tax Officer*³ was cited in support.
- It was argued that the Government's authority under Section 16(3)(b) of the IGST Act and Section 54(6) of the CGST Act does not extend to imposing

¹ TS-700-HC(KER)-2024-GST

² (2017) 9 SCC 1

³ (1981) 4 SCC



conditions that entirely negate a taxpayer's right to refunds. Reliance in this regard was placed on the case of **Zenith Spinners v. Union of India**⁴.

Submissions by the Revenue Department

- The Revenue Department defended Rule 96(10) as consistent with the fiscal policy objectives and legislative framework governing GST refunds.
- Referring to Section 54(3) of the CGST Act, the Revenue contended that refund rights under Section 16 of the IGST Act are conditional and may include specific limitations as part of the Government's fiscal policy; which it supported by reference to the Supreme Court ruling in **VKC Footsteps**⁵.

Discussions and Findings

- The Court examined Section 16 of the IGST Act, noting that it provides a zero-rating mechanism for exports, ensuring no tax burden on goods exported from India. Section 16 of the IGST Act, both before and after its amendment (in 2021, effective from October, 2023), does not restrict claiming refunds on taxes paid for input goods and services or on IGST paid on exports. The amendment only added categories of eligible exporters for purpose of IGST refunds.
- Reiterating the principle that subordinate legislation should not override primary legislation, the Court underscored that while conditions could be specified for refunds, they should not infringe on the right to a refund established by the IGST Act. The Supreme Court' judgment in **VKC Footsteps (Supra)** affirmed that such conditions must not infringe upon rights established by primary legislation.
- The Court observed that Rule 96(10) introduced an inequitable differentiation between exporters claiming IGST refund (on exports) vis-à-vis those using the LUT mechanism. Consequently, Rule 96(10) is deemed *ultra vires* to Section 16, i.e. "manifestly arbitrary" as per **Shayara Bano (Supra)**

and leads to unintended and absurd outcomes, contrary to legislative intent.

Decision

- The Court declared Rule 96(10) *ultra vires* to Section 16 of the IGST Act and unenforceable due to manifest arbitrariness and quashed the actions (of denial of refund / recovery of refund granted) initiated against Petitioners, based on this rule. The Court also quashed the recovery of refunded IGST between the period October 23, 2017 to October 08, 2024.

Dhruva Comments

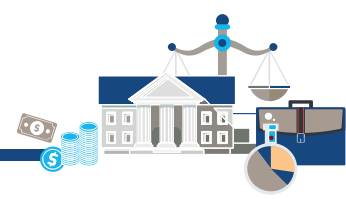
This ruling protects taxpayer rights and ensures that regulatory actions are grounded in fairness and legal validity.

This judgment validates the position that any restrictions including procedural restrictions imposed by subordinate legislation should not curtail benefits otherwise granted by primary legislation.

Exporters that are not within the jurisdiction of the Kerala High Court, based on the ratio of this case, could take a stance to address rejection orders of refund claims or, recovery proceedings of refund granted.

⁴ 2005 SCC Online Guj 601

⁵ (2022) 2 SCC 603





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