



Bombay HC ruling quashing pending proceedings consequent to omission of Rule 89(4B)/96(10)

Hikal Limited vs. Union of India¹

Bombay HC in a batch of writ petitions with lead petition filed by Hikal Limited examines the legal effect and scope of the omission of Rule 89(4B) and 96(10) of the Central Goods and Services Tax Rules, 2017 (CGST Rules). High Court has quashed SCNs/orders which were issued based on omitted Rule 96(10) of the CGST Rules. High Court observes that in the absence of any saving clause or the benefit of Section 6 of General Clauses Act, 1897 (General Clauses Act), all pending proceedings (unless they qualify as “transactions past and closed”) following the omission or repeal of said Rule lapses.

Facts of the case

- In this batch of writ petitions, Petitioners, who are exporters of goods, have challenged the constitutional validity of Rules 89(4B) and/or 96(10) of the CGST Rules.
- Show Cause Notices were issued on the premise that IGST refund claimed by the Petitioner is in violation of Rule 89(4B) or Rule 96(10).
- During the pendency of these petitions, the impugned Rules were omitted vide Notification No. 20/2024 dated October 08, 2024 and the

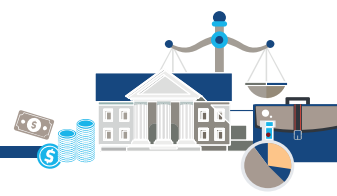
Petitioner, therefore, amended the Petition to bring on record said facts.

Contention of the Petitioner

- In the absence of savings clause, SCNs or orders citing non-compliance with the omitted or repealed Rules, are invalid, ex facie without jurisdiction.
- The common law principle as laid down in various settled precedents is that an omitted or repealed provision is entirely obliterated from the statute book, as if it had never been enacted.
- Said principle applies with full force to the present case, except regarding “transactions past and closed” (i.e. proceedings which have been brought to finality before repeal/reached a final Judgment in the Court of last resort).
- Kerala HC in case of Sance Laboratories Pvt. Ltd.² has declared Rule 96(10) as ultra vires and unconstitutional and striking down of said Rule 96(10) will have pan-India effect. Further, no other High Court has taken any contrary view.
- The effect of striking down of Rule 96(10) by the Kerala High Court must enure even in the State

¹ TS-788-HCBOM-2025-GST).

² TS-700-HC(KER)-2024-GST



of Maharashtra and the authorities in the State of Maharashtra cannot ignore said declaration.

Discussion and Findings

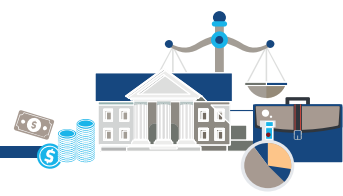
- No statement has been made by the Revenue regarding the challenge to the Kerala High Court's decision declaring Rule 96(10) of the CGST Rules as ultra vires and unconstitutional.
- The issue of constitutional validity of Rules 89(4B) and 96(10) need not be examined as these Petitions can be disposed on the ground of the effect of omission of the two Rules, without any effective savings clause to protect the pending proceedings.
- Pending proceedings/orders will lapse consequent upon the repeal or omission of Rule 96(10) in absence of any saving clause unless
 - the Revenue can establish that Section 6 of the General Clauses Act, applies or that there was any saving clause in the Central Goods and Service Tax Act, 2017 (CGST Act) or the Notification or
 - the transaction is covered by the expression "transactions past and closed".
- Supreme Court in *Gammon India Ltd.*³ observed that where the repeal does not contemplate either a substantial common law or a statutory right, but merely the procedure prescribed to secure the enforcement of the right, then the right itself is not annulled but remains in existence, enforced by applying the new procedure.

Judgment

- Rules which stand omitted are not purely procedural but impact substantive rights of the parties. *"Therefore, the removal or repeal of Rules 89(4B) and 96(10) would essentially erase these Rules from existence as if they had never been enacted or passed, and they should be regarded as provisions that never existed, except in relation to transactions past and closed"*.

- Hence, the proceedings pending in respect of the show cause notices/orders could not have taken any further post the repeal or omission of the Rules i.e. beyond October 08, 2024. Further, no immunity or protection can be claimed under the provisions of Section 6 of the General Clauses Act.
- Only transactions "past and closed" are not affected. This protection for "past and closed" transactions is because of the common law principle that remains intact.
- Show cause notices which did not culminate in any orders and even such orders made by adjudicating authorities before October 08, 2024 which was pending (either before the Appellate Authorities or this Court) could not be regarded as final for them to be included in the expression "transactions past and closed".
- The provisions of Section 6 of the General Clauses Act, does not apply to Notification dated October 8, 2024, as Notification is neither the "General Clauses Act" or "Central Act" or "Regulation". The Notification (vide which Rules stand repealed) only contains the Central Goods and Services Tax (Second Amendment) Rules, 2024.
- The Rules cannot be elevated to the status of a Central Act merely because they may have been enacted by exercising the powers under the Central Act. There is a clear distinction between a Central Act and the Rules. Rules are subordinate legislation, that may be framed by exercising the powers conferred by such Central Act.
- Repeal and Saving provisions contained in Section 174 of the CGST Act also cannot protect the pending proceedings under the impugned Rules omitted vide Notification dated 08 October 2024.
- No general retrospective effect has been given to the Notification dated October 8, 2024

³ (2006) SCC 354



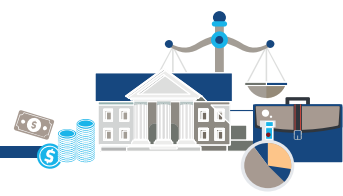
otherwise even the transactions past and closed will have no immunity.

Dhruva Comments

Bombay High Court in its judgment have clearly held that following the omission or repeal of 89(4B) and 96(10) of the CGST Rules vide Notification, all pending proceedings not constituting “transactions past and closed”, are not preserved and will stand lapsed (in the absence of any saving clauses or the benefit of Section 6 of the General Clauses Act).

Pending proceedings can include undisposed show cause notices, orders disposing show cause notices issued after October 8, 2024, or even orders made before said date but not yet finalised due to appeals pending before various forums.

Bombay High Court did not find it necessary to dwell into challenge made by Revenue to Kerala High Court’s decision in Sance Laboratories Pvt. Ltd. dealing iwth constitutional validity of Rule 96(10).



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