IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.13132 of 2025
Date of Decision: 03.11.2026

M/s Greenlam Industries Limited and Another .....Petitioners

Versus

Union of India and Others .....Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge
Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?

For the petitioners: Mr. Goverdhan Lal Sharma and Mr. Amar Pratap Singh, Advocates.

For the respondents: Mr. Harish Sharma, Senior Panel Counsel, for respondent No.1-UOI.

Mr. Sushant Keprate, Mr. Pushpinder Singh Jaswal, Additional Advocates General and Mr. Rajat Chauhan, Assistant Advocate General, for respondent-State.

Mr. Vijay Kumar Arora, Senior Advocate, with Mr. Hitansh Raj, Mr. Gaurav Kumar, Ms. Avantika Bhandari and Ms. Rashita Gaur, Advocates, for respondent No.5.

Ajay Mohan Goel, J. *(Oral)*

By way of the present writ petition, the petitioner has, *inter alia*, prayed for the following reliefs:

> "i) A writ of certiorari or a writ in the nature of certiorari quashing three Impugned Show Cause Notices dated 25.07.2025 (DRC-01)

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bearing reference nos. ZD020725009340Y, ZD020725009337L, ZD020725009332V issued by Respondent No. 3 Annex.....

ii) Issue an appropriate writ, order or direction declaring Rule 96(10) of CGST Rules, 2017 as unconstitutional (as inserted vide Notification no. 53/2018-CT dated 09.10.2018 and Notification no. 54/2018-CT dated 09.10.2018 as amended from time to time) being ultra-vires Section 16 of the IGST Act, 2017 and Section 54 & 164 of CGST Act as well as violative of Article 14 and 19(1)(g) of the Indian Constitution;

iii) Issue an appropriate writ, order or direction declaring that Notification no. 54/2018-CT dated 09.10.2018 and explanation to clause (b) of Rule 96(10) inserted vide Notification no. 16/2020-CT dated 23.03.2020 are applicable prospectively w.e.f. 23.10.2018;

iv) Issue an appropriate writ, order or direction declaring that in the absence of any saving clause, omission of Rule 96(10) of CGST Rules w.e.f 8.10.2024 vide Notification no. 20/2024-CT dated 8.10.2024 renders the impugned proceedings null and void;"

2. The petitioner is aggrieved by show cause notices dated 25.07.2025, issued under Rule 96(10) of Central Goods and Services Tax Rules, 2017 **(hereinafter referred to as 'the CGST Rules').**

3. The primary contention of the learned counsel for the petitioner is that in light of the fact that Rule 96(10) of the CGST Rules was omitted from the CGST Rules, 2017 vide notification dated 08.10.2024, without any saving clause, action initiated by invoking the provisions of the said rule, after the rule was omitted from the CGST Rules, is *per se* bad in the eyes of law.

4. Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in Special Leave Petition (C)

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No.24550 of 2025, titled ***M/s Goodluck India Limited and another Vs. Union of India and Others a/w connected matter***, in which judgment there is a reference to the omission of Rule 96(10) with retrospective effect and submitted that in light of the fact that the show cause notice was issued on the foundation of a non-existing rule, said notices being void *ab initio* are liable to be quashed.

5. Learned Senior Counsel appearing for respondent No.5 and learned Additional Advocate General could not dispute the said facts before us.

6. Hon'ble Supreme Court of India, in *M/s Goodluck India Limited and another versus Union of India* (supra) has, inter alia, been pleased to hold as under:

> "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."

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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, 2000 (2) SCC, 536***. 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

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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."

7. At this stage, learned counsel for the petitioner has also handed over Circular No.264/10/2026-GST, dated 26.10.2026. Relevant portion whereof is quoted hereinbelow:

"4. Kind attention is drawn to 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-VIL-75-SC], along with other connected matters. The Hon'ble Supreme Court vide the said order, has held that in the absence of any saving clause or sunset clause accompanying the omission of rule 96(10) of the CGST Rules, the said omission applies to all proceedings pending as on the date of omission.

5. In the matter of *M/s Goodluck India Limited*, Hon'ble Supreme Court has relied upon the Constitution Bench judgment in *Kolhapur Canesugar Works Ltd. v. Union of India* [(2000) 2 SCC 536 - 2000-VIL-29-SC-CE], wherein it was held that section 6 of the General Clauses

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> 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.
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> 6. In view of this decision of the Hon'ble Supreme Court, it is hereby clarified that the said omission of rule 96(10) of the CGST Rules will be effective retrospectively from 23.10.2017. Accordingly, the field formations are advised to deal with pending proceedings concerning rule 96(10) in accordance with the said judgment. It may also be noted that such a treatment shall apply, *mutatis mutandis*, in respect of omission of rules 89(4A) and 89(4B) as well.
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> 7. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
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> 8. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board."

8. Having heard learned counsel for the petitioner as also learned Senior Counsel appearing for respondent No.5 and learned Additional Advocate General, having gone through the judgment of the Hon'ble Supreme Court in *M/s Goodluck and others versus Union of India and others* (supra) and in light of the fact that 96(10) of the CGST Rules was indeed omitted by a notification dated 08.10.2024 without any saving clause, we hold that the impugned show cause notices dated 25.07.2025 are non-est in the eyes of law as it was issued by the authority without any statutory backing to issue the same. This writ petition is therefore allowed by ordering the quashing of show cause

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notices dated 25.07.2025 (Annexure P-2). Consequences to ensue. Pending miscellaneous application(s), if any, shall also stand disposed of. No order as to costs.

(Ajay Mohan Goel),
Judge

(Yogesh Jaswal),
Judge

November 03, 2026
Rajeev Raturi

High Court of H.P.

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