



“14. In order to consider the contention that Rule 96(10) of the CGST Rules as it presently stands is manifestly arbitrary I proposed a comparison of the right to a refund flowing from Section 16(3)(a) of the IGST Act (in terms of Rule 89 of the CGST Rules) and the right to a refund following from Section 16(3)(b) of the IGST Act (in terms of Rule 96 of the CGST Rules). It may be noted that the reference to the statutory provisions is with reference to the provisions as they stood prior to the amendment of Section 16 w.e.f. 01-10-2023. The learned Senior Counsel appearing for the petitioner in W.P (C) No. 17447/2023 has provided the following comparison statement. A perusal of the statement shows as to how the working of Rule 96(10) of the CGST Rules has resulted in hostile discrimination amongst exporters who opt to apply for a refund under Section 16(3)(a) read with Rule 89 of the CGST Rules and those who opt to apply for a refund in the manner contemplated by Section 16(3)(b). The statement is extracted below in tabular form:-

Sl. No.	Particulars	Rule 89	Rule 96
1.	Parent Provision	Section 16(3)(a) of the IGST Act read with Section 54 of the CGST Act provides for refund of unutilized input tax credit ("ITC") in respect of zero-rated supplies.	Section 16(3)(b) read with Section 54 of the CGST Act provides for refund of the IGST paid on exports of goods or services or both on payment of IGST within the expiry of two years from the relevant date.
2.	Relevant Rule	Rule 89(4) provides for refund of unutilized input tax credit ("ITC") in respect of inputs and input services in case zero-rated supplies are undertaken without payment of taxes, under a Letter of Undertaking ("LUT")	Rule 96 provides for refund of output IGST paid on export of goods and services. Note: This payment of tax is essentially from the accumulated ITC, which is a basket of ITC



		or bond.	availed on inputs, input services and capital goods with no one-to-one correlation between the usage of inputs and usage of credit so long as the inputs satisfy the requirements under Section 16(1) of the CGST Act.																								
3.	Procedure	<table><tr><td>i.</td><td>Section 54(4) of the CGST Act provides that the refund application must be accompanied with the documents specified in Rule 89(2), in Annexure 1 of the Form GST RFD-01 to establish that refund is due to the applicant.</td></tr><tr><td>ii.</td><td>Rule 89(1) provides that an application in Form GST RFD- 01 must be fled along with the necessary documents through the common portal for claiming refund of unutilized ITC.</td></tr><tr><td>iii.</td><td>Refund to be calculated as per the formula provided in Rule 89(4), which is: Refund=(Turnover of zero-rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover.</td></tr><tr><td></td><td>Note:</td></tr><tr><td>(a)</td><td>Net ITC is defined as "ITC availed on inputs and input services during the relevant period."</td></tr><tr><td>(b)</td><td>The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been fled.</td></tr><tr><td>(c)</td><td>There is no identification of input</td></tr></table>	i.	Section 54(4) of the CGST Act provides that the refund application must be accompanied with the documents specified in Rule 89(2), in Annexure 1 of the Form GST RFD-01 to establish that refund is due to the applicant.	ii.	Rule 89(1) provides that an application in Form GST RFD- 01 must be fled along with the necessary documents through the common portal for claiming refund of unutilized ITC.	iii.	Refund to be calculated as per the formula provided in Rule 89(4), which is: Refund=(Turnover of zero-rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover.		Note:	(a)	Net ITC is defined as "ITC availed on inputs and input services during the relevant period."	(b)	The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been fled.	(c)	There is no identification of input	<table><tr><td>i.</td><td>As per Rule 96(1), a shipping bill fled by an exporter shall be deemed to be an application for refund of IGST paid on the export of goods.</td></tr><tr><td>ii.</td><td>The common portal designated by the Customs shall electronically transmit the details of relevant export invoices in respect of the export of goods contained in Form GSTR-1 (statement of outward supplies), to the GST common portal.</td></tr><tr><td>iii.</td><td>The shipping bill shall be deemed to be an application, provided:</td></tr><tr><td>♦</td><td>the person in-charge of conveyance departure or export manifest or an export report covering the number and shipping bills or bills of export; and</td></tr><tr><td>♦</td><td>the applicant has furnished a valid return in Form GSTR-3B (monthly return).</td></tr></table>	i.	As per Rule 96(1), a shipping bill fled by an exporter shall be deemed to be an application for refund of IGST paid on the export of goods.	ii.	The common portal designated by the Customs shall electronically transmit the details of relevant export invoices in respect of the export of goods contained in Form GSTR-1 (statement of outward supplies), to the GST common portal.	iii.	The shipping bill shall be deemed to be an application, provided:	♦	the person in-charge of conveyance departure or export manifest or an export report covering the number and shipping bills or bills of export; and	♦	the applicant has furnished a valid return in Form GSTR-3B (monthly return).
i.	Section 54(4) of the CGST Act provides that the refund application must be accompanied with the documents specified in Rule 89(2), in Annexure 1 of the Form GST RFD-01 to establish that refund is due to the applicant.																										
ii.	Rule 89(1) provides that an application in Form GST RFD- 01 must be fled along with the necessary documents through the common portal for claiming refund of unutilized ITC.																										
iii.	Refund to be calculated as per the formula provided in Rule 89(4), which is: Refund=(Turnover of zero-rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover.																										
	Note:																										
(a)	Net ITC is defined as "ITC availed on inputs and input services during the relevant period."																										
(b)	The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been fled.																										
(c)	There is no identification of input																										
i.	As per Rule 96(1), a shipping bill fled by an exporter shall be deemed to be an application for refund of IGST paid on the export of goods.																										
ii.	The common portal designated by the Customs shall electronically transmit the details of relevant export invoices in respect of the export of goods contained in Form GSTR-1 (statement of outward supplies), to the GST common portal.																										
iii.	The shipping bill shall be deemed to be an application, provided:																										
♦	the person in-charge of conveyance departure or export manifest or an export report covering the number and shipping bills or bills of export; and																										
♦	the applicant has furnished a valid return in Form GSTR-3B (monthly return).																										



				and input services with respect to the exported goods.	iv. In terms of Rule 96(3), the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.
			(d)	This identification is based on the turnover of the zero-rated supplies vis-à-vis the adjusted total turnover.	
			(e)	ITC is allowed only of inputs and input services and not of capital goods.	v. Detailed Guide on IGST refunds in ICES issued by Directorate General of Systems, CBEC pursuant to the IGST refund module being made operational Since 10.10.2017.
		iv.		Prior to export, bond or LUT must be furnished in Form GST RFD-11, as provided in Rule 96A, stating that the exporter shall pay tax along with interest:	vi. Rule 96(9) provides that refund of IGST paid on export of services shall be dealt with in accordance with Rule 89.
			♦	within 15 days of expiry of 3 months, from the date of issue of invoice for export of goods, if the goods are not exported.	
			♦	within 15 days of expiry of 1 year from the date of issue of invoice for export of services, if payment is not received	
4.	Withholding of refund	According to Rule 92(2), claim for refund shall be withheld if the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under Section 54(10) or (11) of the CGST Act and an order in Part A of Form GST RFD-07 shall be passed.			According to Rule 96(4), claim for refund shall be withheld in the following circumstances:
			♦	a request has been received Commissioner to withhold the payment of refund in accordance with Section 54(10) or (11) of the CGST Act; or	
			♦	the proper officer of Customs determines that the goods were exported in violation of the provisions of the	



**NC: 2025:KHC:52372
WP No. 15251 of 2020**

				<table><tr><td></td><td>Customs Act, 1962; or</td></tr><tr><td>♦</td><td>the Commissioner or an officer authorised by the Board, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.</td></tr></table>		Customs Act, 1962; or	♦	the Commissioner or an officer authorised by the Board, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.
	Customs Act, 1962; or							
♦	the Commissioner or an officer authorised by the Board, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.							
5.	Provisional refund	<table><tr><td>i.</td><td>The proper officer must give an acknowledgement in Form GST RFD-02, in terms of Rule 90, within fifteen (15) days of filing of the refund application and indicate the date of filing and time period remaining to file an order under Section 54(7) of the CGST Act.</td></tr><tr><td>ii.</td><td>Section 54(6) of the CGST Act provides that, in case of zero-rated supplies, 90% of the total refund amount claimed shall be refunded on a provisional basis.</td></tr></table>	i.	The proper officer must give an acknowledgement in Form GST RFD-02, in terms of Rule 90, within fifteen (15) days of filing of the refund application and indicate the date of filing and time period remaining to file an order under Section 54(7) of the CGST Act.	ii.	Section 54(6) of the CGST Act provides that, in case of zero-rated supplies, 90% of the total refund amount claimed shall be refunded on a provisional basis.		
i.	The proper officer must give an acknowledgement in Form GST RFD-02, in terms of Rule 90, within fifteen (15) days of filing of the refund application and indicate the date of filing and time period remaining to file an order under Section 54(7) of the CGST Act.							
ii.	Section 54(6) of the CGST Act provides that, in case of zero-rated supplies, 90% of the total refund amount claimed shall be refunded on a provisional basis.							
6.	Processing of refund and sanction, therein	Section 54(7) of the CGST Act provides that, a refund order must be issued by a proper officer within 60 days from the date of receipt of the refund application. <table><tr><td>In terms of Rule 92, if the proper officer is satisfied that the refund amount is due and payable to the applicant, shall make an order in Form GST RFD-06 sanctioning the amount of refund therein, and subsequently issue a payment order in Form GST RFD-05 for the amount so sanctioned.</td><td>Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.</td></tr></table>	In terms of Rule 92, if the proper officer is satisfied that the refund amount is due and payable to the applicant, shall make an order in Form GST RFD-06 sanctioning the amount of refund therein, and subsequently issue a payment order in Form GST RFD-05 for the amount so sanctioned.	Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.				
In terms of Rule 92, if the proper officer is satisfied that the refund amount is due and payable to the applicant, shall make an order in Form GST RFD-06 sanctioning the amount of refund therein, and subsequently issue a payment order in Form GST RFD-05 for the amount so sanctioned.	Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.							

After the amendment in Rule 96 of the CGST Rules –
Insertion of Rule 96(10) and substitution of Rule 89(4A) and (4B):-

Sl.No	Rule 89	Rule 96
1.	Refund of unutilized ITC shall be calculated in accordance with Rule 89(4). Refund is claimed under Rule 89(4A) or (4B) or both:	Rule 96(9) provides that refund of IGST paid on export of services shall be



NC: 2025:KHC:52372
WP No. 15251 of 2020

	<table><tr><td>(i)</td><td>Net ITC shall be reduced by the ITC availed for which refund is claimed under Rule 89 (4A) or (4B) or both;</td></tr><tr><td>(ii)</td><td>Turnover of zero-rated supply of goods shall be reduced by turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;</td></tr><tr><td>(iii)</td><td>Adjusted total turnover shall be reduced by the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both;</td></tr><tr><td>(iv)</td><td>Net ITC is defined as ITC availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.</td></tr></table> Note: The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been filed.	(i)	Net ITC shall be reduced by the ITC availed for which refund is claimed under Rule 89 (4A) or (4B) or both;	(ii)	Turnover of zero-rated supply of goods shall be reduced by turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;	(iii)	Adjusted total turnover shall be reduced by the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both;	(iv)	Net ITC is defined as ITC availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.	dealt with in accordance with Rule 89. Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.
(i)	Net ITC shall be reduced by the ITC availed for which refund is claimed under Rule 89 (4A) or (4B) or both;									
(ii)	Turnover of zero-rated supply of goods shall be reduced by turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;									
(iii)	Adjusted total turnover shall be reduced by the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both;									
(iv)	Net ITC is defined as ITC availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.									
2.	Under Rule 89(4A) In case the applicant has received supplies from a supplier who has availed the benefit of Notification No. 48/2017-CT dated 18.10.2017 (deemed exports), refund of ITC availed in respect of "other inputs and input services" used in making zero-rated supply of goods or services or both, shall be granted. Under clause (a) Rule 89(4B) In case the applicant has received supplies from a supplier who has availed the benefit of Notification No. 40/2017-CT(R) dated 23.10.2017 or Notification No. 41/2017- IT(R) dated 23.10.2017 (reduced rate of tax – merchant exporters), the following refund shall be granted: <table><tr><td>♦</td><td>ITC availed in respect of "inputs" received under the said Notification s for export of goods, and</td></tr><tr><td>♦</td><td>ITC availed in respect of "other inputs and input services" used in making export of goods.</td></tr></table>	♦	ITC availed in respect of "inputs" received under the said Notification s for export of goods, and	♦	ITC availed in respect of "other inputs and input services" used in making export of goods.	Rule 96(10)(i) provides that "persons" claiming refund of IGST on export of goods or services, should not have received supplies under the following notifications: <table><tr><td>♦</td><td>Notifications No. 48/2017-CT dated 18.10.2017 (nil rate of tax – deemed exports), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme;</td></tr><tr><td>♦</td><td>Notification No. 40/2017-CT(R) dated 23.10.2017 (reduced rate of tax –merchant exporters; or</td></tr></table>	♦	Notifications No. 48/2017-CT dated 18.10.2017 (nil rate of tax – deemed exports), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme;	♦	Notification No. 40/2017-CT(R) dated 23.10.2017 (reduced rate of tax –merchant exporters; or
♦	ITC availed in respect of "inputs" received under the said Notification s for export of goods, and									
♦	ITC availed in respect of "other inputs and input services" used in making export of goods.									
♦	Notifications No. 48/2017-CT dated 18.10.2017 (nil rate of tax – deemed exports), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme;									
♦	Notification No. 40/2017-CT(R) dated 23.10.2017 (reduced rate of tax –merchant exporters; or									



**NC: 2025:KHC:52372
WP No. 15251 of 2020**

		◆ Notification No. 41/2017-IT(R) dated 23.10.2017 (reduced rate of tax – merchant exporters).				
3.	<i>Under clause (b) of Rule 89(4B)</i> <i>In case the applicant has availed the benefit of Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 79/2017-Cus dated 13.10.2017 (nil rate of duty – export benefit under Customs), refund of ITC availed in respect of "other inputs and input services" to the extent used in making export of goods, shall be granted.</i> <i>Note: The ITC is only of the inputs and input services used in making export of goods with a one-to-one correlation with the export of goods unlike Rule 89(4).</i>	Rule 96(10)(ii) provides that "persons" claiming refund of IGST on export of goods or services, should not have availed benefit of the Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 79/2017-Cus dated 13.10.2017 (nil rate of duty – export benefit under Customs), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme. Note: <table><tr><td>(i)</td><td>The word "person" would have the same meaning assigned under Section 2(84) of the CGST Act.</td></tr><tr><td>(ii)</td><td>There is no identification of time or consignment, and where or when the benefit of the above Notifications has to be availed.</td></tr></table>	(i)	The word "person" would have the same meaning assigned under Section 2(84) of the CGST Act.	(ii)	There is no identification of time or consignment, and where or when the benefit of the above Notifications has to be availed.
(i)	The word "person" would have the same meaning assigned under Section 2(84) of the CGST Act.					
(ii)	There is no identification of time or consignment, and where or when the benefit of the above Notifications has to be availed.					

Shayara Bano (supra) is the authority for the proposition that when the Court finds the provisions of plenary or subordinate legislation manifestly arbitrary, those provisions must be struck down. In paragraph 101 (of the SCC report) of Shayara Bano (supra) the law is stated thus:-