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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.20929 of 2025

Date of decision: 12.10.2026

Morepen Laboratories Limited **.....Petitioner**

Versus

Union of India and others **.....Respondents**

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner : Ms. Krati Singh and Mr. Vaibhav Singh Chauhan, Advocates.

For the Respondents : Mr. Balram Sharma, Deputy Solicitor General of India with Mr. Rajeev Sharma, Advocate, for respondent No.1.
Mr. Vijay Kumar Arora, Senior Advocate with Mr. Aditya Bharat Manuwalia, Advocate (through V.C) and Mr. Hitansh Raj, Mr. Gaurav Kumar, Ms. Avantika Bhandari and Ms. Rashita Thakur, Advocates, for respondents No. 2 to 4.

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner has prayed for the following reliefs:-

> "A. Issue a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing impugned SCN dated 02.12.2025 (Annexure P-1);

[1]***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

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> B. Issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction declaring Rule 89(4B) of the Central Goods and Services Tax Rules, 2017 as illegal and unconstitutional"

2. The grievance of the petitioner is that show cause notice (Annexure P-1) has been issued on the basis of Rule 89(4)(B) of the Central Goods and Services Tax (hereinafter referred to as the "CGST") Rules, 2017, which show cause notice is dated 02.12.2025 ignoring the fact that as on the said date, no notice could have been issued on the basis of Rule 89(4)(B) of the "CGST" Rules, 2017 as this Rule stood omitted from the "CGST" Rules, 2017, by a notification dated 08.10.2024 without any saving clause.

3. Learned counsel for the petitioner drew the attention of the Court to the judgment of the Hon'ble Supreme Court of India in ***Special Leave Petition (C) No.24550 of 2025, titled M/s Goodluck India Limited and another versus Union of India and others a/w other connected matter,*** in which judgment of the Hon'ble Supreme Court, there is a reference to the omission of Rule 89(4)(B) with retrospective effect and submitted that in light of the fact that, the show cause notice was issued on the premise of a non-existing Rule, the same is *void ab initi*o and is liable to be quashed on said count.

4. Though, learned Deputy Solicitor General of India submitted that the process which led to the issuance of the

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impugned show cause notice was initiated and completed before the omission of the statutory rule, however, he could not demonstrate to the contrary that as on the date when the show cause notice was issued, Rule 89(4)(B) was not in the rule book.

5. 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:
>
> > "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."
>
> 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.
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> 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

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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 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."

6. Having heard learned counsel for the petitioner as also, learned Deputy Solicitor General and 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

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the fact that Rule 89(4)(B) of the CGST Rules, 2017 was indeed omitted by a notification dated 08.10.2024 without any saving clause, we hold that the impugned cause notice dated 02.12.2025 is 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 notice dated 02.12.2025 (Annexure P-1). Consequences to ensue. Pending miscellaneous application(s), if any, shall also stand disposed of. No order as to costs.

(Ajay Mohan Goel)
Judge

(Romesh Verma)
Judge

12th October, 2026.
(yogesh)

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