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### Gujarat High Court strikes down levy of IGST on ocean freight

Levy of IGST on ocean freight held impermissible in law by Gujarat High Court

The Gujarat High Court has held that the levy of IGST on ocean freight is not permissible and declares the relevant notifications as unconstitutional.

#### Facts of the case:

Writ petitions were filed by various assesseees before the Gujarat High Court challenging the levy of IGST on ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

IGST was levied on ocean freight through notification no. 8/2017-Integrated Tax (Rate) dated 28 June 2017. Further, the liability to pay tax on such service was fixed on the importer as the recipient of service vide entry at serial no. 10 to notification no. 10/2017-Integrated Tax (Rate) dated 28 June 2017.

Gujarat High Court disposed of a batch of writ petitions vide common judgment in the case of Mohit Minerals Pvt. Ltd.<sup>1</sup> (writ petitioner) on 23 January 2020.

#### Contentions of writ petitioner:

- The writ petitioner submitted that levy of IGST on ocean freight tantamounts to double taxation as IGST was already discharged once on the import of goods where such freight amount already formed a part of the valuation of goods.
- It was contended that the services of foreign shipping lines were procured by the foreign exporter. The writ petitioner was not a part of the said transaction and hence, cannot be said to be the "recipient" of services for the purpose of payment of IGST.
- In terms of notification 10/2017-Integrated tax (Rate), the recipient of service is liable to pay tax under reverse charge mechanism (RCM). Since the writ petitioner is not the recipient of the services, it cannot be made liable to pay tax.
- The entire gamut of transaction occurred outside India. Supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India up to the Customs station of clearance in India is neither an inter-state supply nor an intra-state supply. In such circumstances, no GST can be levied and collected from the writ petitioner.
- Further, the services cannot be construed as import of services by the writ petitioner as the location of supplier of service, i.e. foreign shipping line and the location of recipient of services, i.e. foreign exporter, are both outside India and hence, outside the scope of levy of GST.

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<sup>1</sup> Special Civil Application No. 726 of 2018

## **Contentions of Revenue:**

- The Revenue contended that IGST on ocean freight is levied based on representations received from Indian shipping industry to provide a level playing field to Indian shipping lines.
- Further, the IGST paid under reverse charge mechanism was available as input tax credit to the importer and hence, there was no additional cost.

## **Ruling:**

- The Gujarat High Court examined the provisions of GST law and observed that taxing statutes have to be given a strict interpretation. Importers cannot be deemed to be covered within the scope of the term "recipient" defined under the GST law for the purpose of levy of IGST on ocean freight services.
- The Revenue has erred in treating importers as recipient of services as the services are actually received by the foreign exporter. The Indian importers were not even liable to pay consideration to the foreign shipping lines and hence, cannot be held liable to pay tax on such services.
- It was observed that the transaction is not entered into by supplier or the recipient located in India. The mere fact that the transportation of goods terminates in India, will not make such supply of transportation of goods as taking place in India.
- Since the importer of goods was not the recipient of supply of ocean freight services, input tax credit could not be availed, which was sought to be recovered under the impugned notifications.
- Accordingly, the Gujarat High Court allowed the writ petitions and declared the impugned notifications as unconstitutional being ultra-vires the provisions of IGST Act.

## **Our comments:**

The judgment is likely to provide closure to the contentious issue of levy of IGST on ocean freight services and provides relief to importers who were subjected to double taxation.

While this judgement would provide guidelines to matters pending before High Courts in other states, the final judgment of these courts would have to be seen. Also, we need to keep a watch on Revenue approaching the Hon'ble Supreme Court against this judgment.



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