INDIRECT TAXES

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GST – Recent Judgments and Advance Rulings

A. Writ Petition

1. *MOHIT MINERALS PVT. LTD. VS. UNION OF INDIA – GUJARAT HIGH COURT*

Facts, Issue involved and Contention of Petitioner

Petitioner is engaged in importing non-coking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. Petitioner is discharging customs duty on the imported products on the full value including ocean freight component. Further, as per IGST Act, petitioner is also discharging integrated tax at the time of import itself, which also includes value of ocean freight.

Petitioner has challenged legality and validity of Notification No. 8/2017-Integrated tax (rate) and entry 10 of Notification No. 10/2017-Integrated tax (rate) which casts liability on importer to discharge integrated tax (under reverse charge mechanism) on ocean freight component. Some of the grounds of writ are as under:

- **Notifications *ultra vires* the IGST Act**

  Impugned notification sought to levy tax on transaction carried out in non-taxable territory as the service provider as well as service recipient are located outside India;

  Such levy go beyond section 1 of IGST Act, which extends to whole of India but not outside India.

- **No levy can be imposed twice under the same Act**

  Petitioner has already paid IGST on the imported coal, which includes the value of freight and insurance. The impugned Notifications again seek to levy IGST on freight components on reverse charge basis. In such circumstances, levy and collection of IGST again on the freight component amounts to double taxation under the same Act, which is impermissible under the law.

- **'Deeming fiction of value' in notification is illegal and there is no concept of value of taxable services**

  Para-4 inserted by the Corrigendum dated 30-6-2017 has a deeming fiction for the

'value of taxable service' as 10% of the CIF value of the imported goods. In given case, petitioner is not concerned about the freight and does not know even about the charges for the same, as it is the sole responsibility of the supplier of the coal outside India. In GST, there is no concept of 'taxable service', which has been the concept only in the erstwhile Finance Act, 1994, to levy the service tax.

Through the delegated legislation there cannot be a deeming fiction to ascertain the value on which the tax is payable as it is an essential legislative function.

- **Entry 10 of Notification No. 10/2017 is *ultra vires* to the Act**

As per section 5(3) of the Act, the tax liability could be shifted on the 'recipient' of supply under reverse charge basis. However, as per Entry 10 of the Notification No. 10/2017-Integrated Tax (Rate), the liability has been shifted on the 'importer' and not the 'recipient'.

Some of the contentions of the respondent are as under:

- **Necessity for tax on ocean freight**

In order to enable Indian shipping line to avail input tax credit on services and to provide a level playing field *vis-à-vis* the foreign shipping lines, service tax was imposed on the service of inward transportation of goods. Subsequently representations were received that many FOB transactions were converted into CIF transaction (entered in non-taxable territory – outside India). In order to see that both Indian shipping lines and foreign shipping lines suffer tax on inward transportation of goods, the importers were made liable to pay tax on the service of inward transportation of import cargo.

- **Two separate taxable events**

There are two separate taxable events. The levy under the notification draws power from the charging section of the Act. In the present case, the levy on the transportation services received by the importer under the impugned notification draws power under Section 5 of the IGST Act, 2017. Further, levy of IGST on import of goods is a separate taxable event as provided under Section 3(7) of the Customs Tariff Act, 1975.

- **No violation of Article 14 or Article 19(1)(g) of Constitution**

There is no violation of Article 14 or Article 19(1)(g) of the Constitution of India as the importers are free to carry on their trade. This levy is on all importers and does not interfere with the right of the importers to practice any profession, or to carry on any occupation, trade or business.

- **On discrimination, unreasonable classification, hardship & adverse effect on business**

Merely because of the imposition of the levy, if the business becomes uneconomical or may cause any hardship, the same cannot be a ground for striking down the said levy.

The sum and substance of the submissions canvassed on behalf of the Union of India is that the levy introduced on the import freight service does not result in additional cost to the importer as the GST paid by them on the inward transportation of goods as well as on the import freight services is available as ITC.