

Gujarat HC holds levy of IGST on ocean freight paid on imported goods 'ultra vires'

Issued on: 3 February 2020



Summary

The Gujarat High Court (HC) pursuant to writ filed before it, has quashed the levy of Integrated Goods and Services Tax (IGST) on ocean freight paid on imported goods. The HC further declared relevant notifications issued by the government in this regard to be 'ultra vires' the GST law due to lack of legislative competency.

Facts of the case

- The applicant¹ is engaged in importing non-cooking coal from Indonesia, South Africa and the US and supplying it to various domestic industries including power, steel, etc. in India.
- The applicant discharges the customs duty on the imported products on value of the goods including ocean freight.
- As per a notification² issued in this regard, the applicant is also required to pay IGST under reverse charge mechanism (RCM) on the value of goods imported including ocean freight.
- The applicant preferred a writ petition challenging the legality and validity of the relevant notifications.

Gujarat HC's observations and ruling

- **Entire chain of events took place outside India:** The HC noted that the entire chain of events took place outside India and 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.
- **Person liable to pay tax under RCM cannot be other than recipient:** The government is only authorised to specify the categories of supply on which tax is to be paid by the recipient of supply under RCM. Thus, it could not fasten the liability to pay tax on RCM basis on person other than the recipient.
- **Dual taxation:** Once the freight has already suffered IGST as part of the value of the goods being imported, the levy of the IGST cannot be imposed on the same freight amount by treating it as supply of service. Thus, the HC held that double taxation, by way of delegated legislation, when

the statute does not expressly provide, is not permissible.

- **Importer not recipient of transportation service:** The HC observed that in case of CIF contract, the contract for transportation is entered into by the seller, i.e., the foreign exporter, and not by the importer buyer. Thus, the importer is not the recipient of the service of transportation of the goods. Accordingly, the applicant cannot be made liable to pay tax by treating him as an indirect recipient of service.
- **Ultra vires:** Therefore, the HC declared the relevant notifications as ultra vires the GST law as they lack legislative competency and quashed the levy of IGST on ocean freight on transportation of goods by a vessel.

Our comments

This is a welcome judgment by the Gujarat HC and will hopefully put an end to litigations or overrule adverse rulings pronounced by various authorities for advance ruling. The judgment is in line with the HC's earlier decision, where the court had struck down the notification imposing service tax under reverse charge mechanism on ocean freight.

¹ M/s Mohit Minerals Pvt. Ltd.

² Notification No. 10/2017 – Integrated Tax (Rate) dated 28th June 2017 read with Notification No. 8/2017 – Integrated Tax (Rate) dated 28th June 2017

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