

AAR does not have jurisdiction to decide on the constitutional validity of IGST levy on ocean freight: Madhya Pradesh AAR

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Summary

The Madhya Pradesh Authority for Advance Ruling (AAR) has in a recent case rejected the challenge to the validity of levy of Integrated Goods and Services Tax (IGST) on ocean freight under reverse charge mechanism (RCM). The AAR clarified that any question relating to the constitutional validity of a notification issued does not fall within its jurisdiction.

Accordingly, the AAR held that IGST is leviable on ocean freight paid on imported goods under RCM even when the ocean freight formed part of CIF value of imports.

Facts of the case

- The Applicant¹ is engaged in the trading of various oils. It intended to import crude soyabean oil on Cost + Insurance + Freight (CIF) basis, which includes the component of ocean freight in the price of imported goods. The payment of ocean freight will be done by the seller located outside India.
- As per the notification² issued, the importer is required to pay IGST on RCM basis on the amount of deemed ocean freight equal to 10% of the value of goods imported.
- The Applicant sought an advance ruling from the Madhya Pradesh AAR on question whether the Applicant is again required to pay IGST on the component of ocean freight under RCM on deemed amount.

Applicant's contentions

- The Applicant contended that at the time of import of the said goods into India, the Applicant is required to pay aggregate customs duties on CNF (Cost + freight)/CIF value of the imported goods which includes IGST component also.

- Since the CNF/CIF value of the imported goods includes the component of ocean freight, the Applicant is required to pay IGST on the ocean freight component also along with other duties of customs. This is the first incidence of payment of IGST on the component of ocean freight by the Applicant.
- The Applicant stated that as per the Notification³, it is again required to pay IGST on the component of ocean freight incurred by them under RCM.
- Accordingly, this amounts to double taxation of IGST on the same component of ocean freight of the imported goods which is illegal and against the basic principles GST of law.
- It is settled law that there should not be any double taxation of the same tax on the same goods.

Madhya Pradesh AAR's observations and ruling

- The AAR noted that as per the two aforesaid notifications, the IGST on ocean freight has to be paid by the importer under RCM,

¹ M/s E-DP Marketing Pvt. Ltd.
² Notification No. 8/2017 – Integrated Tax (Rate) dated 28th June 2017

³ Notification No. 10/2017- Integrated Tax (Rate) dated 28th June, 2017

irrespective of the fact that such freight charges are included in the CIF value.

- The AAR further observed that any question relating to constitutional validity of the notifications issued is not within the jurisdiction of AAR.
- The notifications are issued on the basis of the recommendations of the GST Council, and the GST Council in turn is empowered by the Constitution of India⁴ to make recommendations to the union and states on taxes, cesses and surcharges levied, which may be subsumed in GST, principles of levy, place of supply, etc.
- It is thus clear that any notification issued as per the recommendations of the GST council, and the law laid down is binding upon the AAR.

- The AAR held that in terms of prevailing provisions of the GST laws, the Applicant is liable to pay IGST on ocean freight on reverse charge basis.

Our comments

Levy of IGST on ocean freight has been a matter of extensive litigation. Writ petition challenging the levy has been filed before Himachal Pradesh, Orissa and Gujarat High Courts (HC). While the Himachal Pradesh HC has issued notices to the revenue and has listed the matter for hearing on 24 July 2019, the Gujarat HC has stayed the assessment order demanding tax, interest etc. till the final order.

⁴ Article 279A(4) of the Constitution of India inserted vide the Constitution One Hundred and First Amendment Act, 2016,

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