

## **Tax Alert: Gujarat HC directs petitioner to claim IGST refund paid on ocean freight**

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## Summary

The Gujarat High Court (HC), pursuant to a writ petition filed before it, has directed the petitioner to file an application to claim refund of Integrated Goods and Services Tax (IGST) paid on the component representing ocean freight before the competent authority. Further, if any application is preferred for the refund of said amount, authority concerned shall immediately look into the same and pass an appropriate order within four weeks and the authority shall not raise any technical issue with respect to the refund claim of the IGST amount.

## Facts of the case

- The petitioner<sup>1</sup> filed a writ petition for striking down the notification<sup>2</sup> which required importers to pay IGST under reverse charge mechanism (RCM) on the amount of deemed ocean freight as being ultra vires<sup>3</sup>.
- The Petitioner also prayed for refund of the IGST already paid pursuant to the impugned notification along with appropriate interest on such refund.

## Petitioner's contentions

- **Already held ultra vires by the Gujarat HC in earlier ruling:** The petitioner referred to the earlier HC's judgment<sup>4</sup> wherein the HC had declared the impugned notification as ultra vires. The petitioner argued that the relief prayed by it should be granted by virtue of the cited ruling.
- **Refund of IGST:** The petitioner had deposited IGST and as the impugned notification has been struck down, the petitioner is entitled to the refund of the said amount of IGST along with interest.

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<sup>1</sup> M/s Gokul Agro Resources Ltd.

<sup>2</sup> Notification No. 10/2017 - Integrated Tax (Rate) dated 28th June 2017

<sup>3</sup> of Section 5(3) of the Integrated Goods and Services Tax Act, 2017 and Article 14 of the Constitution of India

<sup>4</sup> Mohit Minerals Pvt. Ltd. vs Union of India

## Gujarat HC's observations and ruling

- **Refund claim to be allowed:** The Gujarat HC observed that since the impugned notification has been struck down as ultra vires, the refund claim should be allowed. It accordingly directed the petitioner to file an appropriate refund claim application with the competent authority.
- **Direction to authority:** The HC further directed that if any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass appropriate order in accordance with law, keeping in mind the decision of this court, rendered within four weeks from the date of receipt of this order.
- **Not to raise query:** Further, the HC ordered that the competent authority shall not raise

any technical issue with regard to the claim for refund of the IGST amount.

### Our comments

The levy of IGST on ocean freight has been a matter of extensive litigation since inception. The Gujarat HC, while maintaining its view in its landmark judgment in case of Mohit Minerals, has now directed the petitioner to seek refund of the IGST amount.

It will be interesting to observe the stance of the revenue authorities as to whether they move to the Supreme Court or agree with the HC decision thereby making amendments in the GST law.

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