



Federation of Freight Forwarders' Associations in India

National Apex Body of Customs Brokers' Associations in India

Levy of IGST on Ocean Freight Unconstitutional

The Union government and states have equal and co-ordinate power to legislate on matters of Goods and Services Tax (GST), the Supreme Court ruled on delivering a significant verdict outlining the powers of federal units in a democratic set up. The Apex Court admitted the plea of the central government to challenge Gujarat High Court's decision quashing Integrated Goods and Service Tax (IGST) on ocean freights under reverse charge mechanism. The Gujarat High Court last year held that the Notification 8/2017 IGST(R) and Entry 10 of Notification 10/2017 IGST(R) levying IGST on ocean freight as ultra vires the IGST Act, and thereby unconstitutional for the lack of legislative competency.

In the case of Mohit Minerals Pvt. Ltd. Vs Union of India, Gujarat High Court has sets aside IGST on Ocean Freight and held that no tax is leviable under the IGST Act, 2007, on the 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 and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.

The High Court, while considering a bunch of petitions, the High Court held that tax cannot be imposed on some supposed theory that the importer is directly or indirectly recipient of the service. The term 'recipient' has to be read in the sense in which it has been defined under the Act. There is no room for any interference or logic in the tax laws, the High Court said. Before the High Court, the petitioners claimed that challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods. A bench, headed by justice Dhananjaya Y Chandrachud, interpreted the pertinent legal provisions to further hold that the recommendations of the GST Council are not binding on the Centre and states, and that such recommendations only have a persuasive value. The court pointed out that there are no provisions in the Goods and Service Tax Act, 2017 (GST Act) that deal with situations where there is repugnancy between the laws drawn up by the Centre and states, and it is for the GST Council to advise them suitably whenever such occasions arise.

“The Union and state legislatures have simultaneous powers to legislate on GST and constitution does not envisage a repugnancy provision and GST council must work in harmonious manner to achieve workable solution,” held the court”.

The Court in its order has analysed the dispute relating to Ocean freight from the time the same was introduced in the erstwhile service tax regime and have accordingly dealt with both the aspects of double taxation as well as the fact that the transaction takes place outside the taxable territory. However, it needs to be evaluated whether the ruling can be applied in case of FOB transaction.

One of the important observation/rulings made by the Court is with respect to non-availability of input tax credit when payment is made by a person other than the recipient of supplies. The said pronouncement is prone to invite litigation. Another important facet which has been touched upon by the ruling is on the scope of the residual provision, section 7(5)(c), where the Court has held that none of the place of supply provision, i.e., section 10 to 13 of the IGST Act can be applied in determining the place of supply. In such cases, the place of supply shall be determined basis the facts of each case and the location where the majority aspects of the transaction are undertaken. Though the ruling provides a much-needed relief to the industry, however, one can expect the order to be challenged before the higher authority.

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