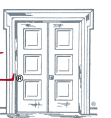


# Nangia Andersen LLP

## NEWSFLASH

Apex Court upholds Gujarat High Court's decision quashing levy of IGST on Ocean Freight

May 2022



# Apex Court upholds Gujarat High Court's decision quashing levy of IGST on Ocean Freight



## Background

Supreme Court of India in the matter of M/s Mohit Minerals Pvt Ltd ('Respondent') pronounced landmark judgement by eliminating levy of IGST under reverse charge on Ocean Freight on transportation of goods by vessel from a place outside India to a place in India. Union of India ('Petitioner') filed an appeal against judgment of the Gujarat High Court (HC), deeming the importer of goods as the recipient of shipping services in case of import of goods on a Cost-Insurance-Freight (CIF) basis.

Apex court agreed with the HC to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed.

## Brief Facts and Contentions

- Respondent imported non-coking coal from Indonesia, South Africa and the U.S. by ocean transport on CIF basis, which is supplied to domestic industries. Goods are transported from a place outside India, up-to the customs station in India;
- Respondent pays customs duties on the import of coal, which includes the value of ocean freight. In the case of a CIF contract, the freight invoice is issued by the foreign shipping line to the foreign exporter, without the involvement of the importer. Ocean freight is paid by the importer when goods are imported under a 'Free-on-Board' contract.
- Respondent alleges that Notification 8/2017- Integrated Tax (Rate) and Serial 10 of Notification 10/2017- Integrated Tax (Rate) ['the Impugned Notifications'] amounts to double taxation, as ocean freight is included in the value of goods for the purpose of customs duty which the importer is liable to pay;
- Respondent filed a writ petition before the HC challenging that the impugned notifications are ultra vires the IGST Act and CGST Act and as customs duty is levied on the component of ocean freight, levy of IGST on the freight element in the course of transportation would amount to double taxation;
- Petitioner urged before the HC that although tax is being paid twice on the value of ocean freight, it is not unconstitutional as the tax is on two different aspects of the transaction, namely, the supply of service and import of goods;

## Supreme Court's Judgement

- Apex Court concluded that the Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power of Article 279A(4) are binding on the legislature's power to enact primary legislations;
- IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;
- Impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply'. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act;
- For the aforementioned reasons, the Revenue's SLP is dismissed and the Hon'ble Court agreed with the HC to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed.



### Nangia Andersen LLP's Take

The judgment by the Hon'ble Supreme Court of India to strike down levy of IGST on Ocean Freight on transportation of goods by vessel from a place outside India to a place in India is a very sound and welcome judgment. It would bring to an end the contentious dispute of IGST on ocean freight and would provide clarity and relief for the assessee.

Levy of Reverse charge on ocean freight is now unconstitutional in view of this landmark judgement of the Apex Court. Indian importers (who had paid GST under RCM on Ocean Freight) should evaluate the possibility of filing refund claims for claiming the said amounts (to the extent not utilized as input credit). Further, importers who had not paid the tax on import of such Ocean Freight services would no longer be required to pay GST on such services in view of the said judgement.

**Reference: Civil Appeal No. 1390 of 2022**







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