



**Newsflash:
Mohit Minerals Private Limited Supreme Court
Ruling - No levy of IGST on ocean freight in case
of import of goods on CIF basis.**



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1.0 Introduction

In view of careful interpretation and analysis of the fundamentals of Constitution, the Supreme Court verdict in the case of M/s. Mohit Minerals Pvt Ltd has clearly etched its spot as one of the most significant rulings of the recent times. Through the judgement pronounced on 19 May 2022, Honourable Apex Court has held that there would be no separate levy of IGST on transportation costs (i.e. freight) which forms a part of the customs valuation of goods in case of imports on a CIF (Cost, insurance and freight) basis.

The constitutionality of levy of GST under reverse charge on ocean freight component in case of CIF contracts was challenged by the aggrieved M/s. Mohit Minerals Pvt Ltd by way of filing writ application before the Gujarat High Court. The applicant imported coal from various countries on CIF basis and discharged customs duty at the time of importation of goods. Being the importer of goods, the applicant was additionally required to pay IGST under reverse charge mechanism on the cost of transportation charged by the foreign shipping lines to the foreign exporter. The matter was assessed and the notifications in dispute were declared to lack legislative competency and held to be unconstitutional by Gujarat HC.

The Supreme Court verdict confirms the judgement of Gujarat HC pronounced dated 23 January 2020.

2.0 Highlights of the Judgement

The striking highlights of the landmark judgement are summarised as under:

2.1 'Reverse charge' cannot be disintegrated from 'recipient of supply':

- 'Reverse charge' as defined under the Act imposes liability to pay tax on the 'recipient' of supply instead of the supplier.
- Importers in CIF contracts do not have privity of contract with the foreign supplier of transportation services. Neither are they liable to pay consideration to the foreign supplier in relation to the services. Thus, the definition of 'recipient' is in no way satisfied by the Indian 'importer' in case of supply of services of transportation by the foreign shipping lines to the foreign exporter.

- Where the 'importer' does not qualify to be a recipient of service, the question of reverse charge does not arise.

2.2 No delegated legislation through deeming fiction :

- Section 5 of IGST Act empowers issuance of notifications for rates and other miscellaneous provisions to be prescribed, however 'description of service' is an essential legislative function and cannot be defined through notification on recommendations of the GST council.
- Taxable event cannot be created through delegated legislation. Thus, 'importer' defined as a 'recipient of service' through IGST Rate Notification 10/2017 is ultra vires the Act.
- It is pertinent to note that a notification cannot be ultra vires the parent legislation.

2.3 Double taxation and Composite supply:

- It has been held that a tax on supply of service already included as a tax on composite supply of goods is not permissible.
- The 'aspect theory' does not hold water since it does not permit double taxation of the same amount or value by treating it once as an independent levy on import of services and another by inclusion in the value of import of goods.
- It violates the principle of 'composite supply' and the overall scheme of GST legislation.

2.4 Recommendations of GST council not binding on the Union and State:

- GST council is a recommendatory body constituted to play a 'constructive and enabling role'
- Though GST council is empowered to recommend on wide range of areas concerning GST along with plenary powers to make recommendations on GST related matters other than those mentioned under Article 279A, such recommendations cannot create binding and enforceable rights.
- The powers of legislature would prevail over the recommendations of the GST Council.

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This Newsflash summarizes the constitutionality of levy of GST under reverse charge on ocean freight . It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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