



GST Supreme Court Update in case of Mohit Minerals on the issue of Ocean Freight



Mohit Minerals Pvt Ltd v. Union of India

dt.19.05.2022

Facts of the case:

- The petitioners had filed writ petitions before the Gujarat HC regarding levy of IGST on the component of ocean freight paid by the foreign seller to a foreign shipping line, on a reverse charge basis. .
- The Gujarat HC pronounced the verdict in favor wherein they held that impugned notifications are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency.
- However, the revenue preferred appeal before the Supreme Court.



Ruling by Supreme Court:

- Supreme court has upheld the decisions of Gujarat High court by **stating that recommendations of GST Council are not binding on the union and states & they are recommendatory in nature**
- The 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.
- The recipient of freight services (provided by shipping line) in case of CIF contracts is the foreign exporter and not the India importer. Therefore, importer of goods in India cannot be regarded as recipient of services.
- The Court after a detailed deliberation held that under the IGST Act, no tax is leviable on ocean freight for imports on a CIF basis and the impugned notifications are ultra vires the IGST Act



Way Forward & unanswered questions:

- Should the tax-payers stop discharging IGST under reverse charge basis on future imports based on SC ruling or wait for formal Circular/ instruction from the GST council?
- Whether refund under Section 54 can be claimed for IGST already paid under RCM?
- Whether refund will be granted even if ITC has been availed of IGST paid under RCM?
- What happens to cases wherein RCM has been paid during the course of GST proceedings such as scrutiny, audit, survey, etc?
- Whether time-limit specified in section 54 of the CGST Act would apply while making application for refund?

THANK YOU



D-723/ 724, Neelkanth Business Park,
Vidyavihar (West), Mumbai 400086



022-25148595 | 022-2514859 |

+91 9152729402 | +91 9152729403 |

+91 8291466022



www.scvora.com

PARTNERS

Subodh Vora

M: +91-9821151467 | E: subodh@scvora.com

Kush Vora

M: +91-9821305187 | E: kush.vora@scvora.com

Bhakti Vora

M: +91-9821362481 | E: bhakti.vora@scvora.com

Piyush Gada

M: +91-9773434725 | E: piyush.gada@scvora.com

Subodh Vora & Co.
Chartered Accountants