

**GIB/GJ/MOHIT MINERALS/23-01-2020/HC-44**

**High Court Category :** Taxability

**State :** Gujarat

**Order No.:** GIB/GJ/MOHIT MINERALS/23-01-2020/HC-44

**Name of Entry :**  
Mohit Minerals Pvt. Ltd.

**Date :** 23-01-2020

**Breif Issue :**

**Issue Involved:**

Levy of IGST on importer of goods the estimated component of Ocean Freight paid for transportation of the goods by Foreign seller.

**Relevant Notifications:**

1. IGST R 8/2017 Dated 28 June 2017-Entry no. 9-IGST @5% on ocean freight- services provided by a person located in non-taxable territory to a person located in a non-taxable territory.
2. IGST R 10/2017 Dated 28 June 2017- Entry no.10 – RCM to be paid by importer of the goods located in taxable territory.

**Grounds:**

- Impugned notifications are contrary to the provisions of Article 265 of the Constitution of India. Article 265 of the Constitution provides that: “No tax shall be levied or collected except by authority of law.” Thus, both the levy and collection of tax shall be provided by a statute enacted by a competent legislature. A delegated legislation, i.e. a rule, regulation or notification, cannot provide for levy or collection of tax which is not authorized by the parent statute.
- Supply of ocean freight service is not covered either by Section 7 (inter-state supply) or Section 8 (intra-state supply) of the IGST Act. IGST does not contemplate levy and collection of tax from a person who is neither the supplier nor the recipient of supply.
- Time of supply of services in case where the tax is payable under the reverse charge basis is the earliest of the date of payment entered in the books of accounts of the recipient or the date of debit in the bank account or sixty days from the date of issue of invoice by the supplier. Thus, a person other than a recipient of supply cannot determine the time of supply as per the provisions of Section 13(3) of the IGST Act.

- Value of the ocean freight service cannot be determined by the importer of goods.
- Input tax credit can only be availed by the recipient of the supply.  
Section 16 of the CGST Act provides that every registered person shall be entitled to take input tax credit on any supply of goods or services or both to him, which are used or intended to be used in the course or furtherance of business.
- Provisions relating to the returns apply where either the person is a supplier or a recipient of the supply. If the person is neither a supplier nor a recipient of supply, such provisions do not apply.
- IGST is leviable on a transaction treated as an import of goods under the IGST Act read with the Customs Tariff Act, 1975. Once the freight has already suffered the IGST as a part of the value of the goods being imported, the dual levy of the IGST cannot be imposed on the same freight amount by treating it as supply of service.
- Input tax credit can only be availed by the recipient of the supply.  
Section 16 of the CGST Act provides that every registered person shall be entitled to take
- Input tax credit on any supply of goods or services or both to him, which are used or intended to be used in the course or furtherance of business.

**Decision of Advance Ruling Authority :****Decision:**

No tax is leviable under the Integrated Goods and Services Tax 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 upto 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 impugned Notification No.8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional.