

GIB/GUJ/SAL STEEL/ 29.08.2019/HC-45

High Court Category : REVERSE CHARGE MECHANISM

State : Gujarat

Order No.: GIB/GUJ/SAL STEEL/ 29.08.2019/HC-45

Name of Entry :
Sal Steel Limited

Date : 29-08-2019

Breif Issue :

R/SPECIAL CIVIL APPLICATION NO. 14683 of 2019

Facts of the case:

- The petitioner is a manufacturer who imported various raw materials on CIF basis from overseas for the purposes of manufacture of finished products wherein the overseas supplier would incur costs towards ocean freight by engaging a shipping line.
- The Central Government issued two Notifications **Notification No. 15/2017 – ST** and **16/2017 – ST** which casted responsibility to pay Service tax on reverse charge basis (RCM) on the importer. with effect from April 23, 2017.
- The petitioners being importers did not pay Service tax under RCM. Department issued SCN for demand of Service tax along with interest and penalty.

Ground:

- The service for which tax is proposed to be collected under the impugned provisions is admittedly rendered and consumed outside India because the service is that of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India.
- Section 94 does not confer any power on the Central Government to make rules for extra territorial events and hence the impugned provisions are also ultra vires the rule making power.
- The importers in CIF contracts i.e. the writ applicants herein are neither service providers nor service receivers in respect of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India.
- Section 68(1) and also the reverse charge Notification under Section 68(2) permit the Central Government to collect and recover service tax only from the person providing the service or from the person receiving the service, and not from a third party. The rule making power of section 94 also does not permit the Central Government to make rules in this regard.
- Charging section has to be strictly interpreted, and not by way of inferences or presumptions about any indirect benefit to a person.
- There are no machinery provisions in the Act. Section 67 provides that tax is to be paid on the value of service. In the present case since the value of ocean freight is not available on CIF

contract, rule which provides an option to pay ST at 1.4% is ultra vires the machinery provisions of Section 67 and also rule making power under Section 94.

Decision of Advance Ruling Authority :

Decision:

High Court struck down the amendments carried out to Service tax rules along with Notifications requiring importer to pay service tax on ocean freight under reverse charge mechanism. HC struck down **Notification No. 15/2017 – ST** and **16/2017 – ST**, making **Rule 2(1)(d)(EEC) & Rule 6(7CA)** of the Service Tax Rules, 1994 and inserting explanation-V to reverse charge **Notification No. 30/2012 – ST** as being ultra vires of Section 64, 66B, 67 and 94 of the Finance Act, 1994.