

May 2022



## Indirect Tax Case Law Alert

### Union of India v Mohit Minerals Private Limited [Supreme Court of India]

The Supreme Court in the case of **Union of India v Mohit Minerals Private Limited** [Civil Appeal No. 1390 of 2022] in a judgement dated 19 May 2022, has struck down the levy of Integrated Goods and Service Tax (“IGST”) on Ocean Freight, under GST laws.

The judgement rendered by a three-judge bench, led by Justice DR. D.Y. Chandrachud, also went on to reject the notion that GST council decisions were binding. The Supreme Court alluded to the principles of cooperative and fiscal federalism and held that:

*“the recommendations of the GST Council transform into legislation in and of themselves under Article 246A [of the Constitution] would be farfetched. The recommendations of the GST Council are made binding on the Government only when it exercises its power to notify secondary legislation to give effect to [such recommendation] in the uniform taxation system”*

#### Facts

The respondents were importers of non-coking coal from overseas exporters by ocean transport on a ‘Cost-Insurance-Freight’ (“CIF”) basis, which was then supplied to domestic industries.

Notification No.8/2017- Integrated Tax (Rate) dated 28 June 2017 was issued effective from

1 July 2017, which levied IGST at the rate of 5% on the supply of services, including transportation of goods, in a vessel from a place outside India up to the customs station of clearance in India. The Central Government also issued Notification 10/2017- Integrated Tax. Serial No. 10 of Notification 10/2017 categorized the recipient of services of supply of goods by a person in a non-taxable territory by a vessel to include an importer under Section 2(26) of the Customs Act 1962.

The effect of such notifications was that the Indian importer was subject to the levy of IGST on the component of ocean freight, paid by the foreign seller to a foreign shipping line, on a reverse charge basis.

Both the impugned notifications, Notification 8/2017 and Notification 10/2017, were challenged as ultra vires the IGST Act. The Gujarat High Court struck down the levy of IGST, against which the Union of India filed an appeal in the Supreme Court.

#### Findings of the Supreme Court

##### On the levy of GST on Ocean Freight

- The Supreme Court, on a conjoined reading of the IGST Act and the CGST Act, held that the import of goods by a CIF contract constitutes an “inter-state” supply which can be subject to IGST, where the importer of such goods would be the recipient of shipping service.

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- The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed the IGST Act for the purposes of reverse charge. The IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation.
- The supply of service of transportation by the foreign shipper forms a part of the bundle of supply of goods between the foreign exporter and the Indian importer, on which the IGST is payable. Thus, any levy imposed solely on the ‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under the CGST Act. Since the Indian importer is already liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services in a CIF contract, **a separate levy for the ‘supply of services’ would be in violation of Section 8 of the CGST Act**, and the scheme of the GST legislation

## On the recommendations made by the GST Council

- The recommendations of the GST Council are not binding on the Union and States. The Constitution indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective

of the GST regime to foster cooperative federalism.

- The Parliament and the State legislatures possess simultaneous power to legislate on GST. The functions of the GST Council must be understood in the context of such simultaneous legislative power under Article 246A of the Constitution.
- 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 Article 279A (4) of the Constitution are binding on the legislature’s power to enact primary legislations

## Key Takeaways from the Judgement

- The Supreme Court has not given any new interpretation to the powers of the GST Council and has only highlighted the scope and ambit of the GST Council. The powers of the GST Council were always recommendatory, and the legislative powers of the state are not eroded in any form.
- The levy of GST was struck down as ocean freight paid could not be considered as consideration for an “independent supply of service” alienated from the composite supply of goods, transportation, and insurance [under the CIF contract], on which IGST, as a duty of Customs, was already being collected, as a supply of goods.

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