

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8881 of 2020**

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BHARAT OMAN REFINERIES LTD.

Versus

UNION OF INDIA & 1 other(s)

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Appearance:

MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MR DEVANG VYAS(2794) for the Respondent(s) No. 1,2

MR KSHITIJ AMIN, STANDING COUNSEL for the Respondent No.1

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 18/08/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicant, a government company, has prayed for the following reliefs:

"A. This Hon'ble Court may be pleased to issue a writ of mandamus directing the respondents to grant refund of the amount of IGST already paid by the petitioner pursuant to entry No.10 of Notification No.10/2017-IGST (Rate) dated 28.6.2017 (as per statement at Annexure D) along with appropriate interest on such refund;

B. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the respondents to grant refund of the amount of IGST already paid by the petitioner pursuant to Entry No.10 of Notification No.10/2017-IGST(Rate) dated 28.6.2017 (as per statement at Annexure D) along with appropriate interest on such refund;

C. Ex parte ad interim relief in terms of prayer B may kindly be granted;

D. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray."

2 On 31st July 2020, this Court passed the following order:

*"1. We have heard Mr. Uchit N. Sheth, the learned counsel appearing for the writ applicant. It appears that the issue raised in this writ application is squarely covered by the recent pronouncement of this Court in the case of **Mohit Minerals Private Limited Vs. Union of India and Others, Special Civil Application No.726 of 2018** and allied petitions decided on 23-1-2020.*

2. Let notice be issued to the respondents returnable on 18-8-2020. In the meantime, Mr. Sheth shall furnish one copy of his entire paper book to Mr. Devang Vyas, the learned Additional Solicitor General of India, who would be appearing for the respondents."

3 We need not state the facts in details giving rise to this litigation as the issue raised in this writ application is no longer *res integra*. The subject matter of this writ application is the levy of tax under the Integrated Goods and Services Tax Act, 2017 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 stations of clearance in India and the levy of collection of tax of such Ocean freight under the Notification No.10/2017-IGST dated 28th June 2017.

4 The Notification referred to above was a subject matter of challenge in a batch of writ applications, the lead matter being the **Mohit Minerals Pvt. Ltd. vs. Union of India and others [Special Civil Application No.726 of 2018 decided on 23rd January 2020]**. This Court in **Mohit Minerals**

(supra) and allied petitions declared the Notification No.8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry No.10 of the Notification No.10/2017-Integrated Tax dated 28th June 2017 as *ultra vires* the Integrated Goods and Services Tax Act, 2017 on the ground that the same lacked legislative competency. Both the Notifications referred to above were declared to be unconstitutional.

5 Mr. Kshitij Amin, the learned standing counsel appearing for the respondents fairly submitted that the issue raised in this writ application is squarely covered by the decision of this Court in the case of **Mohit Minerals (supra)**.

6 In such circumstances referred to above, this litigation succeeds and is hereby allowed. The respondents are directed to sanction the refund and pay the requisite amount of IGST already paid by the writ applicant pursuant to the Entry No.10 of Notification No.10/2017-IGST dated 28th June 2017 declared to be *ultra vires* by this Court in **Mohit Minerals (supra)**. The respondents shall undertake the process of refunding the requisite amount of IGST at the earliest and see to it that the same is paid to the writ applicant within a period of six weeks from the date of receipt of the writ of this order. Mr. Kshitij Amin, the learned standing counsel shall communicate about this order passed today to the authorities concerned.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH