

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 11799/2019

1. Lakhpatt Trading And Industrys Private Ltd., A Company Incorporated Under The Companies Act, 1956 And Having Its Registered Office At G- 72/73 And 79/80, Phase - I, Boranada, Jodhpur (Raj) Through Its Director And Authorized Signatory Shri Ameet Bhandarri S/o Shri Dalpat Bhandari, Aged About 36 Years, Resident Of 27, Shri Hastinapur, Nehru Park, Jodhpur.
2. Ameet Bhandarri S/o Shri Dalpat Bhandari,, Aged About 36 Years, Resident Of 27, Shri Hastinapur, Nehru Park, Jodhpur.

----Petitioners

Versus

1. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.
2. Goods And Service Tax Council, Through Its Secretary, 5Th Floor, Tower-II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001
3. Dy. Commissioner (Adm.), GST Commercial Taxes Building, Kachahari Parisar, Jodhpur

----Respondents

For Petitioner(s) : Mr. Sharad Kothari, Advocate
Mr. Rishabh Sancheti, Advocate
through Video Conferencing

For Respondent(s) : Mr. Mukesh Rajpurohit, Additional
Solicitor General
Mr. Rajvendra Saraswat, Advocate
Mr. Sunil Bhandari,, Advocate
Mr. Hemant Dutt, Advocate

**HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**
Judgment

13/07/2021

Petitioners have filed the petition under Article 226 of the Constitution of India seeking following reliefs:-

"(i) Section 9 of the Constitution (One Hundred and First Amendment) Act, 2016 in so far as the same introduced Explanation to Clause 1 of Article 269-A, may be struck down;

(ii) Section 7(2) & 7(4) of the IGST Act, 2017 in so far as the same create a 'deeming fiction' of equating import of goods & services into India with inter-state trade & commerce be declared ultra vires and stuck

down as the same have been enacted outside the legislative competence of the Parliament and in contravention of the law laid down by the Hon'ble Supreme Court;

(iii) impugned entry at Serial No. 9(ii), its proviso & para No. 4 of the Explanation in Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (Annexure-2) and Entry 10 of the Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017(Annexure-3) may kindly be quashed by declaring that the same are de hors legislative competence, ultra vires the Integrated Goods and Services Tax Act, 2017 and suffer from the vice of excessive delegation.

(iv) It may be declared that no IGST is leviable on RCM basis on an importer of goods from over-seas seller on the Ocean Freight services rendered by a person located in non-taxable territory to an over-seas seller by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, as otherwise mandated qua the impugned provisions of the Notifications No. 8/2017 & 10/2017 dated 28.06.2017.

(v) The Respondents may be directed to refund to the Petitioner the amount of IGST recovered so far on RCM basis on Ocean Freight services as tabulated in Annexure 9 and further amounts if any; and also permit availment of accumulated Input Credit.

(vi) Respondent No. 2 may kindly be directed to place before this Hon'ble Court the records of the recommendation given and all decision taken in respect of impugned Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (Annexure-2) and the Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017 (Annexure-3).

(vii) Restrain the Respondents from charging any tax or duty on artificial basis, and direct them to recover all legal and valid taxes on actual transaction value;

(vii) Any other order or direction which this Hon'ble Court deems just and proper may kindly be passes.

(ix) Petitioner may kindly be granted costs of the Petition."

Learned counsel for the petitioners has submitted that he is only pressing reliefs at number (iii),(iv) & (v) and has further submitted that the said reliefs claimed by the petitioners are

covered by decision given by the Gujarat High Court in the case of *Mohit Minerals Private Limited vs. Union of India and Ors.* (R/Special Civil Application No. 726 of 2018) decided on 23.01.2020.

Learned counsel for the petitioners has not pressed other reliefs sought by the petitioners in the writ petition. The counsel for the petitioners has further submitted that in view of the decision given by the Gujarat High Court in the case of *M/s COMSOL Energy Private Limited vs. State of Gujarat* (R/Special Civil Application No. 11905 of 2020) decided on 21.12.2020, the petitioners are also entitled for refund of Integrated Goods and Service Tax (IGST) paid by them.

Learned counsel for the respondents have failed to controvert the fact that the issue involved in the present case is covered by decisions given by the Gujarat High Court relied upon by the learned counsel for the petitioners.

Learned counsel for the respondents has, however, submitted that the judgment passed by the Gujarat High Court in the case of *Mohit Minerals Private Limited (supra)* is under challenge before the Apex Court but operation of the judgment has not been stayed.

The operative part of the order passed by the Gujarat High Court in *Mohit Minerals Private Limited (supra)* reads as under :-

"In the result, this writ-application along with all other connected writ-applications is allowed. The impugned Notification No. 8/2017 - Integrated Tax (Rate) : MANU/GSIT/0006/2017 dated 28th June 2017 and the Entry 10 of the Notification No. 10/2017 - Integrated Tax (Rate) : MANU/GSIT/0014/2017 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. Civil Application, if any, stands disposed of.

The operative part of the judgment of Gujarat High Court in *M/s COMSOL Energy Private Limited (supra)* reads as under:-

"12. Similarly, this Court, in the case of *Bharat Oman Refineries Ltd. vs. Union of India (Special Civil Application No. 8881 of 2020, decided on 18.08.2020)* directed the respondent to sanction the refund of the IGST paid by the assessee pursuant to the Entry No. 10 of the Notification No. 10/2017-IGST dated 28.06.2017 declared to be ultra vires in the case of *Mohit Minerals Pvt. Ltd. (supra)*.

13. In view of the aforesaid, this writ-application succeeds and is hereby allowed. The deficiency memo issued in the prescribed form RFD-03 vide Nos. ZD240720008807J and ZD240720008830U both dated 17.07.2020 are hereby quashed and set-aside.

14. The respondent is directed to process the refund claim filed in the prescribed form RFD-01 online portal for the month of February 2018 and march 2018 for an amount of Rs.93.54 lakh along with simple interest at the rate of 6% per annum."

Keeping in view the submissions made by the learned counsel for the parties, this petition is disposed of in terms of the decisions given by the Gujarat High Court in *Mohit Minerals Private Limited (supra)* & *M/s COMSOL Energy Private Limited (supra)*.

(VINIT KUMAR MATHUR), J

(SABINA),J