

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 22433 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.J.DESAI****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

|   |   |  |
|---|---|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  |  |
| 2 | To be referred to the Reporter or not ?   |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

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OZONE PROCON PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

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

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,2

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**CORAM: HONOURABLE MR. JUSTICE A.J.DESAI**

**and**

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 16/06/2022**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE A.J.DESAI)**

1. Rule. Learned advocate Mr. Utkarsh Sharma waives service of notice for the respondents.

2. With the consent of learned advocates for the parties, the matter is taken up for final hearing.
3. The petitioner is engaged in the business of import of crude oil of edible grade from outside the country. The purchases of goods in question are made on high seas basis and the imports are on Cost Insurance Freight ['C.I.F' for short]. The person from whom the goods are purchased i.e. exporter is supposed arrange transportation of the goods up to the port of India. When the goods are imported into the country and when it sought clearance for home consumption, the petitioner pays the custom duty and tax under the Integrated Goods and Services Tax Act,2017 ['IGST' Act for short] on total value of goods including the C.I.F.
4. The respondent exercising its powers under section 5(3) of the IGST Act issued a notification dated 28.06.2017 making it applicable from 01.07.2017 by which, different categories of supply of service, supplier of service, recipient of services for those persons liable to pay taxes under IGST Act is mentioned.
5. The second respondent-authority issued notice on 29.08.2019 alleging that the petitioner has not paid the tax on reverse charge basis on ocean freight in respect of the import consignment in view of the Entry No. 10 of the notification dated 28.06.2017.
6. Since the petitioner had already paid the customs duties on the goods purchased, by way of present petition, he has challenged Entry No.10 of the said notification dated 28.06.2017.

7. Entry No. 10 reads as under:

| Sr No. | Category Of Supply Of Service   | Supplier of Service                       | Recipient of Service   |
|--------|---|---|--|
| (1)    | (2)   | (3)                                       | (4)  |
| 10     | Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India | A person located in non-taxable territory | Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) located in the taxable territory. |

8. A Notice came to be issued by this Court on 18.12.2019.

9. Meanwhile, challenge to said Entry came to be decided by the Co-ordinate Bench of this Court [Coram: Hon'ble Mr. Justice J.B.Pardiwala and Hon'ble Mr. Justice A.C.Rao] by CAV Common Judgement dated 23.01.2020 in case of ***Mohit Minerals Pvt Ltd vs. Union of India and ors*** in Special Civil Application No. 726 of 2018 and allied matters by which, the Division Bench has held the aforesaid entry as ultra vires the Integrated Goods and Service Tax Act, 2017 and therefore, the proceedings issued relying upon the said Entry No.10 came to be quashed and set aside.

10. Learned advocate Mr. Uchit Sheth has placed a recent judgement dated 19.05.2022 of the Hon'ble Apex Court in case of ***Union of India and other vs. Mohit Minerals Pvt. Ltd.*** [Civil Appeal No. 1390 of 2022 and allied matters] to submit that the Hon'ble Apex Court has upheld the decision of the Division Bench of this Court passed in Special Civil Application No. 726 of 2018 and therefore,

in view of the above judgement, the proceedings initiated by the authority is required to be quashed and set aside.

11.Learned advocate Mr. Utkarsh Sharma for the respondents opposed this petition.

12.We have heard learned advocates for the parites, perused the impugned notice/communication dated 29.08.2019 issued by the respondent, judgement dated 23.01.2020 passed by this Court by which Entry No. 10 of the notification dated 28.06.2017 is held ultra vires the Integrated Goods and Services Tax Act,2017which is upheld by the Hon'ble Supreme Court and in view of the above position, the proceedings initiated by the respondents as well as notice/communication dated 29.08.2019 are required to be quashed and set aside.

13.Accordingly, the petition is allowed and impugned notice/communication dated 29.08.2019 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

**(A.J.DESAI, J)**

**(BHARGAV D. KARIA, J)**

JYOTI V. JANI