

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 5861 OF 2021

PETITIONER/S:

M/S.K.V.N. IMPEX P LTD.
KVN ARCADE, MEENCHANDA, CALICUT-673018, REPRESENTED BY
ITS DIRECTOR, M.K.RAJESH.

BY ADVS.
K.P.ABDUL AZEES
SHRI.AKHIL SURESH
SMT.T.ARCHANA

RESPONDENT/S:

- 1 THE JOINT DIRECTOR, DIRECTORATE GENERAL OF GST INTELLIGENCE, DIRECTORATE GENERAL OF GST INTELLIGENCE, O/O ADDITIONAL DIRECTOR GENERAL, KOCHI ZONAL UNIT, CENTRAL EXCISE BHAVAN, KOCHI-682017.
- 2 THE JOINT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, C.R.BUILDING, MANANCHIRA, CALICUT-673001.
- 3 CENTRAL BOARD OF INDIRECT TAXES, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NEW DELHI-110001.
- 4 UNION OF INDIA, REPRESENTED BY REVENUE SECRETARY, NORTH BLOCK, NEW DELHI-110001.

BY ADV P.R.AJITH KUMAR, CGC; ADV SREELAL WARRIER SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition under Article 226 of the Constitution of India has been filed for the following reliefs:

- “i) To issue a writ of Certiorari, or any other appropriate writ, order or direction thereby quashing Exhibit P2 Notification No.10/2017-integrated tax (Rate) dated 28/06/2017 as it is ultra vires of the provisions on Integrated Goods and Service Tax Act.
- ii) To issue a Writ of Certiorari striking down the Exhibit P3 Show Cause Notice, which have been issued on the basis of Exhibit P2 Notification.
- iii) To call for the records leading to Exhibit P3 Show Cause Notice and quash the same as it is ultravires of the provisions of the Integrated Goods and Service Tax Act 21017.
- iv) To pass such other orders or directions as this Hon'ble Court may deem fit in the circumstances of the case.

2. Mr Sreelal Warriar learned Counsel for the respondents fairly submits that Notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017 (Ext.P2), on the basis of which the show cause notice has been passed in the present

case, has been set aside by the Supreme Court in *Union of India v. Mohit Minerals*¹. The relevant portion of the aforesaid judgment is extracted hereunder:

“171.1.3. The Government while exercising its rule-making power under the provisions of the CGST Act and the 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 279-A(4) are binding on the legislature's power to enact primary legislations.

171.2. On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, 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.

171.3. The IGST Act and the CGST Act define "reverse charge" and prescribe the entity that is to be taxed for these purposes. The specification of the recipient-in this case the importer-by Notification No. 10 of 2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge.

171.4. Section 5(4) of the IGST Act enables the Central

¹ 2022 (10) SCC 700

Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation.

171.5. The impugned levy imposed on the "service" aspect of the transaction is in violation of the principle of "composite supply" enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the "composite supply", comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the "supply of services" by the shipping line would be in violation of Section 8 of the CGST Act.

172. For the reasons stated above, the appeals are accordingly dismissed. Pending application(s) if any, stand disposed of."

3. Considering the fair submission that the matter is covered in favour of the petitioner, the present writ petition is allowed. The impugned show cause notice is hereby set aside.

Sd/-
DINESH KUMAR SINGH
JUDGE

APPENDIX OF WP(C) 5861/2021

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE BILL OF ENTRY DATED
25.02.2020.
- EXHIBIT P2 THE TRUE COPY OF NOTIFICATION NO.10/2017-
INTEGRATED TAX(RATE) DATED 28.06.2017 ISSUED BY
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE.
- EXHIBIT P3 TRUE COPY OF SHOW CAUSE NOTICE OR NO.20/2018-
19(GST)SCN NO.27/2020-21(GST) DATED 04.02.2021
ISSUED BY JOINT DIRECTOR, DIRECTORATE GENERAL
OF GST INTELLIGENCE, KOCHI ZONAL UNIT, CENTRAL
EXCISE BHAVAN, KALOOR P.O., KOCHI.