

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

**D.B. Civil Writ Petition No. 14177/2019**

M/s Shree Mahesh Oil Products (GSTIN 08ABXFS1765J1ZC), A Registered Partnership Firm Having Its Principal Place Of Business 147-148, Near Vijay Hotel, Bazar No. 2, Bhilwara - Rajasthan - 311001 Through its Partner Mr. Ramesh Chandra Toshniwal Aged 57 Years.

-----Petitioner

Versus

1. Union Of India, Ministry Of Finance (Department Of Revenue) Room No. 46, North Block, New Delhi- 110001 Through Joint Secretary (Revenue).
2. The Goods And Service Tax Council (GST Council), Office Of The GST Council Secretariat, 5Th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001 Through its Secretary.
3. Commercial Taxes Officer, Rajasthan Goods And Service Tax, Special Circle - 2, Bhilwara, Rajasthan - 302005.

-----Respondents

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

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

**Judgment**

**13/07/2021**

Petitioner has filed the petition under Article 226 of the Constitution of India seeking following reliefs:-

*"a. To issue appropriate writ/order/direction to the effect declaring Sr. No. 9(ii) of the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 to be an unconstitutional*

*and ultra-vires to the provisions of the Integrated Goods and Service Tax Act, 2017 to the extent it prescribe rate for levy of Integrated-tax on services by way of transportation of goods by vessel from a place outside India, up to custom station of clearance of India, where service provider i.e. supplier of service and service recipient i.e. recipient of service both are located in non taxable territory i.e. Outside India;*

*b. To issue appropriate writ/order/direction to the effect declaring the Sr. No. 10 of the Notification No. 10/2017 - Integrated Tax (Rate) dated 28.06.2017 to be an unconstitutional, ultra-vires and de-hors to the provisions of the Section 5(3) of the Integrated Goods and Service Tax Act, 2017 read with Section 2(93) of the Central Goods and Service Tax Act, 2017 to the extent it deems 'Importer' within meaning of Section 2(26) of the Custom Act, 1962 as 'recipient' of service;*

*c. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;*

*d. To award costs of and incidental to this application be paid by the respondents;*

*And for this act of kindness, petitioners shall, as in duty bound, ever pray."*

Learned counsel for the petitioner has submitted that he is only pressing reliefs at number (a) & (b) and has further submitted that the said reliefs claimed by the petitioner 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 petitioner has not pressed other reliefs sought by the petitioner in the writ petition. The counsel for the petitioner 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 petitioner is also entitled for refund of Integrated Goods and Service Tax (IGST) paid by him.

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 petitioner.

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 28<sup>th</sup> June 2017 and the Entry 10 of the Notification No. 10/2017 - Integrated Tax (Rate) : MANU/GSIT/0014/2017 dated 28<sup>th</sup> 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**

15-AnilS/VivekM/-

**(SABINA),J**

सत्यमेव जयते