



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 19754 OF 2019 (T-RES)

BETWEEN:

M/S KONKAN SPECIALTY POLY
PRODUCTS PVT. LTD. (UNIT-5)
131 (B) BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575 011
REP. BY ITS SENIOR VICE PRESIDENT
MR. M. RAGHAVENDRA PRABHU
AGED ABOUT 50 YEARS
S/O M. VASUDEVA PRABHU.

...PETITIONER

(BY SRI. P B HARISH., ADVOCATE AND
SRI. MOHAN MAIYA G. L., ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
NO.137, NORTH BLOCK
NEW DELHI-110 001
REP. BY ITS SECRETARY.
2. UNION OF INDIA
MINISTRY OF LAW & JUSTICE
4TH FLOOR, A WING
RAJENDRA PRASAD ROAD
SHASTRI BHAVAN
NEW DELHI-110 001
REP. BY ITS SECRETARY.



3. THE SUPERINTENDENT OF CENTRAL TAX
& CENTRAL EXCISE, OFFICE OF
THE ASSISTANT COMMISSIONER
OF CENTRAL GST
UDUPI AUDIT CIRCLE, 4TH FLOOR
PUNJA BUILDING ANNEXE
LALBAGH, MANGALURU-575 003.

4. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIDHANA SOUDHA
BANGALORE - 560 001
REP. BY ITS PRINCIPAL SECRETARY.

...RESPONDENTS

(BY SRI. H. SHANTHIBHUSHAN, DSGI FOR R1 & R2;
SRI. JEEVAN J NEERALGI, ADVOCATE FOR R3;
SMT. JYOTHI M MARADI, HCGP FOR R4)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTION AGAINST THE RESPONDENTS TO DECLARE IMPUGNED NOTIFICATION 15/2017-ST AND 16/2017-ST DATED APRIL 13, 2017 AS LACKING LEGISLATIVE COMPETENCY, ULTRA VIRES TO THE FINANCE ACT, 1994 VIDE ANNEXURE-A AND B AND HENCE NULL AND VOID AND CONSEQUENTLY TO CALL FOR THE RECORDS OF THE R-3 PERTAINING TO DEMAND NOTICE NUMBERED C.NO.IV/01/11/2018MNG AUDIT GR.31/76/19 DATED 23.01.2019 VIDE ANNEXURE-F ISSUED BY THE R-3 PROPOSING TO LEVY SERVICE TAX ON OCEAN FREIGHT ALONG WITH CONSEQUENTIAL INTEREST AND QUASH THE SAME AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV



ORAL ORDER

Petitioner has called in question the validity of the notifications Nos. 15/2017-ST and 16/2017-ST dated 13.04.2017 at Annexures-A and B on various grounds including that the said notifications lack legislative competency and ultra vires the Finance Act, 1994. Consequently, the petitioner has sought for setting aside of the demand notice at Annexure-F.

2. Petitioner at the time of arguments has submitted that the amount already collected pursuant to proceedings conducted in connection with the notifications at Annexures-A and B are required to be refunded. It is the case of the petitioner that he is a manufacturer in India and makes imports on Cost, Insurance and Freight (CIF) basis. It is further submitted that the foreign supplier bears the cost of freight for the transportation of goods till the port in India. The petitioner it is stated has paid the customs duty on the entire value of Cost, Insurance and Freight. It is further specifically averred



that it is the foreign supplier who engages a foreign transporter and petitioner is not involved in this arrangement and the services of the transporter is availed by the foreign supplier. It is accordingly submitted that the service being availed by the foreign supplier, the question of levying any tax by virtue of the notifications impugned does not arise.

3. Insofar as the factual aspects are asserted, the revenue does not controvert such aspects.

4. Petitioner submits that the identical issue had been the subject matter of adjudication before the Gujarat High Court in the case of ***Messrs Sal Steel Ltd. and one another v. Union of India - (2020) 37 GSTL 3 (Guj)***. It is submitted that Gujarat High Court has already adjudicated on such issue by the order passed by a Division Bench in the above mentioned matter and the present petition also be disposed of on same terms.



5. Sri. Jeevan J. Neeralgi, learned counsel appearing for the respondents submits that the said order of the Division Bench of the Gujarat High Court is pending in a Special Leave Petition filed before the Apex Court, though as on date the order of the Gujarat High Court has not been stayed.

6. It is in light of the admitted facts including as regards the assertion that the petitioner is importing on CIF basis which is in contradistinction to FOB contracts, the observations of the Gujarat High Court made in the context of CIF, striking down the impugned notifications would be applicable. The observations made by the Gujarat High Court in the case of **Messrs Sal Steel** (*supra*) at paragraph Nos. 22, 23, 25, 31, 33, 34, 35, 36 and 38 are as follows:

"22. In the case on hand, indisputably, the overseas sellers/suppliers of the goods have made contracts with the shipping line/shipper for sea transportation of the goods, and such overseas sellers/suppliers have made payment of



transportation charges to the shipping line; and admittedly there is no contract nor any arrangement between the petitioners (who are Indian importers/buyers of the goods) and the shipping line for sea transportation. Thus, ocean freight is admittedly paid by the overseas suppliers/ sellers to the shipping line, and therefore the overseas suppliers, i.e., the sellers of the goods located in foreign country are the persons who have received service of sea transportation from the shipping line, and the value of such service, i.e., ocean freight is also paid by such overseas suppliers/ sellers for receiving such service.

23. "Ocean freight" is the colloquial expression; but the service for which service tax is proposed to be collected under the impugned provisions is described as the "transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India. . ." in all the impugned provisions under rule 2(1)(d)(EEC) of the Service tax Rules, rule 6(7CA) of the Service tax Rules and also in Explanation V of reverse charge Notification No. 30/2012-ST. The service for which tax is proposed to be collected under the impugned provisions is thus admittedly rendered and consumed outside the country, because the service is that of transportation of goods by a vessel from a



place outside India up to the Customs station of clearance in India.

25. Thus, the service proposed to be taxed under the impugned provisions is admittedly that of transportation of goods up to the Indian port, i. e., land mass of the country ; and this service covering sea transportation of hundreds or thousands of KMs is an event occurring beyond the land mass of the country, and hence in the nature of an extraterritorial event. The provisions of the Finance Act, 1994, which is an Act of the Parliament for levy of service tax, do not permit nor empower the Central Government to collect service tax on such extraterritorial events, and the services which are rendered and consumed beyond the land mass of the country.

31. A perusal of section 94 shows that there is no power conferred upon the Central Government to make any Rules or notifications for extraterritorial events; or in other words, for services rendered and consumed beyond the "taxable territory", i. e., beyond India. Obviously, the Act itself is not applicable to the territories other than India and therefore the executives cannot have any power to make Rules for territories beyond India.



33. *The impugned provisions are also ultra vires the rule-making power of section 94 of the Finance Act.*

34. *As observed above, the person receiving service of sea transportation in CIF contracts is the seller-supplier of the goods located in a foreign territory. The Indian importers like the writ applicants are not the persons receiving sea transportation service, because they receive the "goods" contracted by them, and they have no privity of contract with the shipping line nor does the Indian importer make any payment of ocean freight to the service provider. But the impugned provisions make such "importer" liable to pay service tax; and therefore such provisions allowing the Central Government to recover service tax from a third party are ultra vires the statutory provisions of the Finance Act, as discussed below.*

35. *The charging section 66B provides for levy of service tax on the value of "services", other than those specified in the negative list. The term "service" is defined under section 65B(44) to mean any activity carried out by a person for another for consideration. Thus, service is an activity carried out by a person (i. e., the service provider) for another person (i. e., the receiver of service). Only*



two parties are recognized by the Parliament in regard to "service", viz., the service provider and the recipient of service.

36. Section 68(a) of the Finance Act lays down that every person providing taxable service to another person shall pay service tax; and thus the primary obligation to pay service tax is on the person providing such service.

38. But the importers in CIF contracts, i. e., the writ applicants herein are neither service providers nor service receivers in respect of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India. Section 68(1) and also the reverse charge notification under section 68(2) permit the Central Government to collect and recover service tax only from the person providing the service or from the person receiving the service, and not from a third party. The rule-making power of section 94 also does not permit the Central Government to make rules for recovering service tax from a third party who is neither the service provider nor the service receiver."

7. The Gujarat High Court has clearly expressed the view on two aspects, that the Act itself would be



inapplicable to territories other than India and the Executive would not have the power to make rules for territories beyond India and where the events could be described to be extra territorial events i.e., service provided by a foreign exporter and a transport company which also enters into contract for transportation outside the territory of India, such extra territorial transactions cannot be the subject matter of a national law. The other aspect that also becomes clear is that the charging section under Section 66B of the Finance Act provides for levy of tax on value of services other than those specified in the negative list. Thus, service is an activity that is taxable on the two parties who are availing of service and herein the contract of services is between a foreign exporter and a transporter, while the importer in a CIF contract does not avail of any service of transportation. If that were to be so, the said aspect is also covered as per the observations made at paragraph No. 38 as extracted above.



8. In light of the same, this Court is in agreement with the above legal position while clarifying that the validity of notifications is in the context of CIF contracts only. In light of the absence of any stay of such order and keeping in mind the principle laid down in the case of ***M/s. Kusum Ingots & Alloys Ltd. v. Union of India - (2004) 168 (ELT) 3 SC***, the validity of notifications having been adjudicated in terms of Article 226(2) of the Constitution of India, the same would be the legal consequence throughout the territory. Accordingly, in the present case as well, taking note of the judgment of the Gujarat High Court, the relief granted therein is reiterated.

9. Accordingly, the notifications at Annexures-A and B are declared as illegal noticing it being set aside by the Gujarat High Court. Consequent to setting aside of the notifications at Annexures-A and B, the demand notice at Annexure - F is also set aside. In light of setting aside of the notifications at Annexures-A and B, in terms of the principle of unjust enrichment, petitioner is entitled for



refund, subject however to petitioner filing an application for refund, which is required to be decided in accordance with law on the principles applicable including that of unjust enrichment.

10. In light of the above, the writ petition is ***disposed of.***

**Sd/-
(S SUNIL DUTT YADAV)
JUDGE**

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