IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 29-09-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10330, 10335, 3872, 35528, 35575, 35785 of 2019, 11211, 13680, 13683, 20195 of 2020, 1491, 1492, 5735, 5732, 3260, 6287, 6563, 6855, 7623, 12342, 10666, 13933, 15753, 21777 of 2021, 8182, 11866 of 2022 and 32121 of 2018

W.P.No.10330/2019 :

M/s.KTV Health Food Pvt. Ltd. ... Petitioner

-vs-

1. Union of India,
   represented by its Secretary,
   Ministry of Finance,
   Department of Revenue,
   North Block,
   New Delhi – 110 001.

2. Central Board of Indirect Taxes and Customs,
   Ministry of Finance,
   Department of Revenue,
   North Block,
   New Delhi – 110 001.

3. The Principal Chief Commissioner of GST,
   No.26/1, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai – 600 034. ... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration to declare that Sl.No.10 of Notification No.10/2017-Integrated Tax (Rate), dated 28.06.2017, and Sl.No.9 (ii) of Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017, as null and void and violative of Article 245, 269A of the Constitution of India and also violative of Section 1, Section 7(4) and Section 5 (3) of the Integrated Goods and Services Tax Act,2017.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.Umesh Rao K.,
Senior Standing Counsel,
assisted by Ms.G.Vandhini,
Junior Standing Counsel.

COMMON ORDER

In these batch of Writ Petitions, the respective petitioners have challenged Sl.No.9 (ii) of Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017, and Sl.No.10 of Notification No.10/2017-Integrated Tax (Rate), dated 28.06.2017.

2. Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017, specifies the rate of tax payable for the services. The relevant portion of the said Notification is extracted below :

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No.8/2017-Integrated Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 5, sub-section (1) of section (6) and clause (iii) and clause (iv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the integrated tax, on the inter-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table :-

Table

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
9	**Heading 9965** (Goods transport services)	(ii) Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place	5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
		outside India up to the customs station of clearance in India.		carriers and tankers) used in supplying the service has not been taken. *Explanation* : This condition will not apply where the supplier of service is located in non-taxable territory. [Please refer to *Explanation* no.(iv)]

3. Vide Notification No.10/2007-Integrated Tax (Rate), dated 28.06.2017, the liability to pay tax has been fixed on reverse charge basis by the recipient. The relevant portion of the said Notification is extracted below :

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No.10/2017-Integrated Tax (Rate)

New Delhi, the 28th June, 2017

GSR.....(E).- In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of such services as specified in column (4) of the said Table :-

Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
10	Services supplied by a person located in non-taxable teritory by way of transportation of goods by a vessel from a place outside India up to the cutoms 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 terrirory.

4. Both the learned counsel for the petitioners and the learned counsel for the Revenue confirmed that the issue is no longer *res integra* and is covered in favour of the petitioners in terms of the decision of the Hon'ble Supreme Court in *Union of India* v. *Mohit Minerals (P.) Ltd*., (2022) 92 GST 101 (SC), rendered on 19.05.2022. The

relevant portion from the conclusion in the said decision of the Hon'ble Supreme Court is extracted as under:

"148. (i) xxxx

(ii) xxxx

(iii) 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 10/2017 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."

5. In view of the above, these Writ Petitions stand allowed. No costs. Consequently, the connected W.M.Ps.are closed.

(S.V.N.,J.)

(C.S.N.,J.)
29-09-2022

Index : Yes/No
Internet : Yes/No

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To

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W.P.No.10330/2019 & Batch

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