

OD - 7

APOT/99/2017
IA NO.GA/2/2017 (Old No.GA/1057/2017)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

M/s. LCL LOGISTIX INDIA PRIVATE
LIMITED

-Versus-

UNION OF INDIA AND ANR.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd March, 2023

Appearance :
Mr. Bharat Raichandrani, Adv.
Ms. Swapna Das, Adv.
...for the appellant.

Mr. Bhaskar Prasad Banerjee, Adv.
.. for the respondent.

The Court : This intra-Court appeal filed by the appellant/writ petitioner is directed against the order dated 19th January, 2017 in WP No.3 of 2017. In the said writ petition, the appellant had challenged the order passed by the Commissioner, Service Tax (ii), Commissionerate, Kolkata, imposing tax on the subject transaction.

We need not labour much to decide the issue involved in this intra-Court appeal in view of the decision of the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Mohit Minerals Pvt. Ltd.* reported in Manu/SC/0683/2022. The Hon'ble Supreme Court while allowing the said appeal in paragraph 148 of the judgment held as follows:

148. *Based on the above discussion, we have reached the following conclusion:*

(i) The recommendations of the GST Council are not binding on the Union and States for the following reasons:

(a) The deletion of Article 279B and the inclusion of Article 179(1) by the Constitution Amendment Act, 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;

(b) Neither does Article 279A begin with a non obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State Legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and State laws on GST. The 'recommendations' of the GST Council are the product of a

collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between co-operative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation; and

(c) The Government while exercising its rule-making power under the provisions of the CGST Act and 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 under Article 279A(4) are binding on the Legislature's power to enact primary legislations;

(ii) 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.

(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 No.10/2017 where the importer of such goods would be the receipt of shipping service;

- (iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction of the delegated legislation;*
- (v) The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principles of composite supply' enshrined under Section 2(3) 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."*

In the case on hand, the observation of the Hon'ble Supreme Court in sub-paragraph (v) of paragraph 148(i)(b) would be applicable.

Thus, following the above decision of the Hon'ble Supreme Court, this appeal (APOT/99/2017) is allowed and, consequently, the order passed by the Commissioner of Service Tax (ii), Kolkata, impugned in the writ petition, is quashed.

Consequently, the connected application for stay (IA No.GA/2/2017) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.