IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5191 OF 2021

Liberty Oil Mills Limited … Petitioner

V/s.

Union of India and anr. … Respondents

Mr.Chirag Shetty with Mr.Jitendra Motwani i/by M/s Economic Laws Practice, Advocates for the Petitioner.
Mr.Karan Adik with Mr.Satyaprakash Sharma, Advocates for the Respondents.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 27 JANUARY 2023.

P.C.:-

1. Heard learned counsel for the parties. Taken up for disposal in view of the narrow issue involved.

2. The Petitioner has challenged the show cause notice issued by the Respondent No.2-Commissioner of CGST (Central Excise Tribunal).

3. The Petitioner is a company who is engaged in manufacture of vegetable edible oil, is registered under the goods and services tax

holding a duty registration. A show cause notice issued by the Respondent No.2 dated 31 March 2019 to the Petitioner called upon the Petitioner as to why Integrated Goods and Service Tax (IGST) amounting Rs.4,13,47,167/- be not recovered from the Petitioner under Section 74(1) of Central Goods and Services Act, 2017 alongwith interest and penalty as specified. The gist of the allegation against the Petitioner is found in paragraph No.2 of the show cause notice which reads thus :

> *"2. During the course of GST audit conducted on the records of the assessee for the period from April 2018 to March 2019, it was observed from their financials that during the audit period, they have imported their major input (vegetable oils) from overseas involving payment of ocean freight. In terms of Notf. No.8/2017-Integrated Tax (Rate), dated 28th June, 2017 & Notf. No.10/2017-Integrated Tax (Rate), as amended, where the value of taxable service 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 outside India up to the Customs station of clearance in India, the person liable to pay the IGST under reverse charge has been specified to be the Imported recipient of the goods, as defined in clause (26) of Section 2 of the Customs Act, 1962, located in the taxable territory. However, it was observed during the audit that the assessee have not discharged the said IGST liability under reverse charge as required."*

4. When this petition was filed on 30 June 2021, the Petitioner had relied upon the decision of the division bench of the Gujarat High Court in the case of **Mohit Minerals (P) Ltd. Vs. Union of India**[1]

1 (2020) 33 GSTL 321 (Gujarat)

to which response was given by the Respondents by filing reply affidavit on 27 October 2021 contending as follows:

> *"6. With reference to paragraph 10 of the petition, I say that the Petitioner has submitted its reply to the aforesaid observations vide letter dated 14.07.2020 and have stated that the issue is no longer res integra and has already been settled by the Gujrat High Court in favour of the Petitioner in the case of Mohit Minerals (P) Ltd Vs. Union of India (2020) 33 GSTL 321(Gujrat). I say that the said judgment of Gujrat High Court in the Special Civil Application No.726 of 2018 filed by M/s Mohit Minerals Pvt Limited is assailed before Hon'ble Supreme Court in Special Leave Petition (Civil) No.13958 of 2020 and other connected SLPs. The same are likely to be listed for hearing and final disposal on 26.10.2021.*
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> *Thus the legal competency or otherwise, as contended by the Petitioner, for levy of tax on the said subject matter in terms of IGST Notification No 8/2017 dated 28.06.2017 and Notification No.10/2017 as amended has not attained finality. Since the matter is still sub-judiced, the Petitioners contention that the demand is unsustainable is pre-emptive and not legally correct."*

5. Learned counsel for the Petitioner informs that the Hon'ble Supreme Court has now rendered the decision in case of *Union of India Vs. Mohit Minerals Private Limited*[2] and upheld the judgment of the Gujarat High Court in *Mohit Minerals Private Limited*. Learned counsel for the Respondents states that though this position is correct, the Petitioner can point it out to the Commissioner fact in response to the show cause notice.

2 Civil Appeal No.1390-22 and ors dated 19 May 2022.

6. We do not find any purpose in the case, either for the Petitioner or the Commissioner to invest their time and energy on the issue, if the position on which the show cause notice is founded, already stands concluded in the light of the decision of the Hon'ble Supreme Court.

7. Accordingly, writ petition is allowed and the impugned show cause notice dated 31 March 2019 is quashed and set aside.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

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