IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14549 of 2022
and
W.M.P.No.13747 of 2022

M/s.Chem India,
Prop:Subburathnam Kumarganesh
II Floor, No.3, Ganesh Building,
Mooparappan Street,
T.Nagar, Chennai – 600 017. ... Petitioner

Vs.

The Superintendent of GST & C.Ex.(CIRCL-I Group I),
Office of the Commissioner of GST and Central Excise,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of Order in Original No.01 (R4)/2022 GST (Supdt.) passed in DIN – 20220359TL000000B8AA dated 23.03.2022 and quash the same.

For Petitioner : Mr.R.Ramkumar

For Respondent : Mr.SU.Srinivasan
SCGSC

ORDER

The petitioner is before this Court against the Order-in-Original No.01(R4)/2022 GST (Supdt.) dated 23.02.2022. By the impugned order, the demand proposed in RCM-SCN No.10/2021-GST has been confirmed by the respondent. The Show Cause Notice was issued to the petitioner on the ground that the petitioner has not paid IGST of Rs.13,13,243/- as recipient of services (RCM) i.e, on reverse charge mechanism for service of transportation of goods by vessel from the place outside India up to the customs station of clearance in India, relating service or import of goods in terms of Section 5(3) of IGST Act, 2017 read with Notification No.10/2017-Integrated Tax (Rate).

2. The respondent has considered the decision of the Gujarat High Court in the case of ***Mohit Minerals*** Vs. ***Union of India*** 2020 (1) TMI 974, wherein, the Gujarat High Court has struck down the Notification

No.8/2017 dated 28.06.2017 and Entry 10 of the Notification No.10/2017 dated 28.06.2017 as being unconstitutional and ultra vires of the IGST Act. The respondent however has noted that the Department has filed an appeal before the Hon'ble Supreme Court in SLP(C)No.018588 of 2018 against the judgment of the Delhi High Court in the case of ***Indian Association of Tour Operators*** Vs. ***Union of India and Others*** reported in ***2017 (5) GSTL 4 (Del)***, wherein, the Court declared that Section 94(2)(f)/(hhh) of Finance Act, 1994 did not empower the Central Government to decide taxability of the tour operator services provided outside the taxable territory. Operative portion of the impugned order reads as under:-

> *"28.Further, Constitution Bench of the Apex Court Federation of Hotel & Restaurant Association of India V. Union of India 2022-TIOL-699-SC-MISC-LB, observed that a law with respect to a subject might incidentally affect another subject in some way. There might be overlapping but the overlapping must be in law. If the taxes are separate and distinct imposts and levied on the different aspects, then there is no overlapping in law. Indian National Ship owner's Association (INSA) has also stated in writing that normally doubt taxation means taxing a transaction twice under the same statute. In the present case, however, the taxes are paid under two different statutes for the two distinct taxable events. Hence, there is no doubt taxation under a single statute.*
>
> *29.Therefore, in view of the above, I uphold that the*

tax of Rs.13,13,243/- is liable to be confirmed. The details are furnished in Annexure A to this order.

30.With regard to the interest proposed on the non payment of tax under reverse charge on ocean freight, I find the show cause notice alleges payment of interest in terms of Section 50(1) of the CGST Act, 2017 and for easy reference, I give below the legal provisions contained in the Section -

> *50.Interest on delayed payment of tax-*
>
> *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:*
>
> *[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger].”*

3. It is noticed that on the date of the impugned order, the Hon'ble Supreme Court had not pronounced its judgment in the case of ***Union of India and another*** Vs. ***Mohit Minerals Private Limited***. The impugned order dated 23.03.2022, whereas, the Hon'ble Supreme Court in the case

of ***Union of India and another*** Vs. ***Mohit Minerals Private limited*** reported in ***2022 SCC Online SC 657*** had pronounced its order on 19.05.2022. The respondent had no occasion to consider the same. In Paragraph Nos.176, 177, 178, 179, 180 and 181 it has been observed as under:-

> *"176.In the present case, the question is whether the imposition of IGST on supply of services can be sustained when there is a concomitant imposition of IGST on supply of goods. However, we must first analyse the context in which the IGST is levied on the import of goods in this case.*
>
> *177. The provisions of composite supply in the CGST Act (and the IGST Act) play a specific role in the levy of GST. The idea of introducing 'composite supply' was to ensure that various elements of a transaction are not dissected and the levy is imposed on the bundle of supplies altogether. This finds specific mention in the illustration provided under Section 2(30) of CGST Act, where the principal supply is that of goods. Thus, the intent of the Parliament was that a transaction which includes different aspects of supply of goods or services and which are naturally bundled together, must be taxed as a composite supply.*
>
> *178. It is true that in this case, the first leg of the transaction between the foreign exporter and the Indian importer is a composite supply, while the second leg, between the foreign exporter and the shipping line may, from a perspective, be regarded as a standalone transaction. Both of them are independent transactions and ordinarily, the IGST could be levied an bath sets of transactions-one as supply of goods (under the ambit of composite supply) and the other as supply of services.*

However, the Impugned notifications seek to tax the importer as the deemed recipient of the supply of service. The ASG has advanced an interpretation of Sections 5(3) and 5(4) of the IGST Act, read with Section 2(93) of the CGST Act to contend that the importer can be classified as the 'recipient' of the services. On this interpretation, we have upheld the validity of the impugned notifications under Sections 5(3) and 5(4) of the IGST Act in Section D.2-D.5 of this judgment. The respondents as a matter of fact urged that (i) the Indian importer is not privy to the contract between the foreign exporter and the foreign shipping line; (ii) the Indian importer does not pay consideration to the foreign shipping line; and (iii) the Indian importer does not receive any services from the foreign shipping line since the transportation services are provided by the foreign shipping line to the foreign exporter. The ASG, while advancing arguments on behalf of the Union Government, has opposed these submissions. The Union Government has urged that this Court must look beyond the text of the contract between the foreign shipping line and the foreign exporter to identify the Indian importer as the recipient of the services. This Court has upheld the validity of the impugned notifications on this ground. The Union Government is contradicting the main plank of its submission now by contending that the two legs of the transaction are separate standalone agreements. That would imply, that while on the one hand the Union Government seeks to levy tax on the Indian importer by going beyond the text of the contract between the foreign shipping line and foreign exporter (for the purpose of identifying the Indian importer as the recipient of services), on the other hand, as far as the submissions on composite supply are concerned, the Union Government urges that the contracts must be viewed as separate transactions, operating in silos. We are unable to subscribe to this view. The Union of India cannot be *heard to urge arguments of convenience - treating the two legs of the transaction as connected when it seeks to identify the Indian importer as a recipient of services while on the other hand, treating the two legs of the transaction as independent when it seeks to tide over the statutory provisions governing composite supply.*

179. This Court is bound by the confines of the IGST and CGST Act to determine if this is a composite supply. It would not be permissible to ignore the text of Section 8 of the CGST Act and treat the two transactions as standalone agreements. In a CIF contract, the supply of goods is accompanied by the supply of services of transportation and insurance, the responsibility for which lies on the seller (the foreign exporter in this case). The supply of service of transportation by the foreign shipper forms a part of the bundle of supplies between the foreign exporter and the Indian importer, on which the IGST is payable under Section 5(1) of the IGST Act read with Section 20 of the IGST Act, Section 8 and Section 2(30) of the CGST Act. To levy the IGST on the supply of the service component of the transaction would contradict the principle enshrined in Section 8 and be in violation of the scheme of the GST legislation. Based on this reason, we are of the opinion that while the impugned notifications are validly issued under Sections 5(3) and 5(4) of the IGST Act, it would be in violation of Section 8 of the CGST Act and the overall scheme of the GST legislation. As noted earlier, under Section 7(3) of the CGST Act, the Central Government has the power to notify an import of goods as an import of services and vice-versa:

7. Scope of supply-

[...]

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)116, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

(a) a supply of goods and not as a supply of services, or

(b) a supply of services and not as a supply of goods."

180. No such power can be noticed with respect to interpreting a composite supply of goods and services as two segregable supply of goods and supply of services."

4. Since the respondent had no occasion to deal with the same, I am of the view, the impugned order can be set aside and remitted back to the respondent to pass a fresh order in the light of the decision of the Hon'ble Supreme Court in the case of ***Union of India*** Vs. ***Mohit Minerals Private Limited*** reported in ***2022 SCC Online SC 657.***

5. This Writ Petition stands allowed by way of remand. The respondent shall pass order on merits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected writ miscellaneous petition is closed.

05.12.2024

Index:Yes/No

Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas

To

The Superintendent of GST & C.Ex.(CIRCL-I Group I),
Office of the Commissioner of GST and Central Excise,
No.692, 6th Floor, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.

C.SARAVANAN, J.

jas

W.P.No.14549 of 2022
and
W.M.P.No.13747 of 2022