

# TAX INFO

*Dated: 28.08.2020*

Latest update on GST Law: Information regarding **Important Ruling on Levy of IGST on Ocean Freight** based on the judgement given by Gujarat High Court.

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## Levy of IGST on Ocean Freight

<b>Name of Petitioner</b>	Mohit Minerals Pvt. Ltd.
<b>Name of Respondent</b>	Union of India
<b>Court</b>	Gujarat High Court
<b>Date of Judgement</b>	23.01.2020
<b>Order No.</b>	Special Civil Application No. 726 of 2018

Applicant is a company engaged in the business of import of non-cooking coal from Indonesia, South Africa and U.S.A and supplying it to various domestic industries including power, steel, etc. It has business based at various parts of the country, however, the main business place is in Gujarat and most of the imported coal comes at the port located at Gujarat. The writ-applicant company is registered under the GST laws for payments of GST/IGST besides being paying the customs duty on import of coal. The writ-applicant discharges the customs duty on the imported products at the time of each import and such value includes the value of freight on which customs duty is demanded and paid. The writ-applicant is liable to pay integrated tax in terms of provisions of the Integrated Goods and Services Tax Act, 2017 (IGST/Integrated Tax Act) and accordingly the writ-applicant is paying the integrated tax at the time of import itself, which also includes value of Ocean Freight involved in imported coal.

The Central Government has introduced the Notification No.8 of 2017 – I Tax (Rate) dated 28th June 2017, wherein vide Entry No.9, the Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India.

The Central Government, thereafter, issued the Notification No.10 of 2017 – Integrated Tax (Rate) dated 28th June 2017, by which the Central Government has notified that for the said category of service provided at Serial No.10 to the said Notification, the importer as defined in clause 2(26) of the Customs Act located in the taxable territory shall be the recipient of service.

The writ-applicant in the present writ-application is challenging the legality and validity of the impugned Notification No.8/2017-Integrated Tax (Rate), dated 28.6.2017 and Entry 10 of the Notification No.10/2017-Integrated Tax (Rate), dated 28.6.2017 as the same are lacking legislative competency, ultra vires to the Integrated Goods and Services Tax Act, 2017, and hence unconstitutional. The respondent has levied again the integrated tax on reverse charge basis under the impugned Notifications on the Ocean Freight, for which the writ-applicant is already paying the integrated tax at the time of import with the value of imported coal, which is not permissible under the law.

The Hon'ble Gujarat High Court observed that in case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person located in a 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 and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.

In the result, this writ-application along with all other connected writ applications is allowed. The impugned Notification No.8/2017– Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017–Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional.

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