

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1758 of 2020

GOKUL AGRO RESOURCES LTD.

Versus

UNION OF INDIA

Appearance:

MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 1,2

CORAM:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 26/02/2020

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1 Rule returnable forthwith. Mr. Nirzar Desai, the learned standing counsel waives service of notice of rule for and on behalf of the respondents.

2 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

19A. This Hon'ble Court may be pleased to issue a writ striking down and declaring Entry No.10 of Notification No.10/2017IGST(Rate) dated 28.6.2017 as being ultravires Section 5(3) of the IGST Act as well as Article 14 of the Constitution of India.

B. This Hon'ble Court may be pleased to issue a writ of mandamus directing the learned respondents to grant refund of the amount of IGST already paid by the petitioner pursuant to the impugned Entry No.10 of Notification No.10/2017IGST (Rate) dated 28.6.2017 (as per statement at Annexure D) along with appropriate interest on such refund;

C. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to restrain the learned respondents from taking coercive steps against the petitioner on the basis of the impugned Entry No.10 of Notification No.10/2017IGST(Rate) dated 28.6.2017;

D. Ex parte ad interim relief in terms of prayer C may kindly be granted.

E. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray.●

3 This Court vide judgement and order passed in the case of **Mohit Minerals Pvt Ltd vs. Union of India [Special Civil Application No.726 of 2018 and allied petitions]** declared the Entry No.10 of the Notification No.10/2017Integrated Tax (Rate) dated 28th June 2017 as ultra vires Section 5(3) of the Integrated Goods and Services Tax Act, 2017 as well as Article 14 of the Constitution of India. We may quote paras 254 and 255 of the judgement rendered in the case of **Mohit Minerals (supra)**. Paras 254 and 255 read as under:

254. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the Integrated Goods and Services Tax Act, 2007, on the ocean freight for the services provided by a person located in a nontaxable territory by way of transportation of goods by a vessel from a place outside India upto 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.

255. 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 Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of. •

4 Thus, the principal relief prayed for in this writ application now stands granted by virtue of the aforesaid decision of this Court. Mr. Uchit Sheth, the learned counsel pointed out that his client had deposited a particular amount of IGST and as the Notification has been struck down, his client is entitled to refund of the said amount of IGST. Mr. Sheth invited our attention to Annexure : 'D' to the paper book. Annexure : 'D' at page : 30 is a statement indicating payment of IGST on Ocean freight. The statement reads thus:

GOKUL AGRO RESOURCES LTD
STATEMENT SHOWING IGST PAID ON OCEAN FREIGHT TILL DATE

Sr. No.	Particulars	Amount (Rs.)
1	201718	1,28,86,003
2	201819	3,02,47,487
3	201920 (Till November, 19)	3,37,89,514
	Total	7,69,13,004

5 Mr. Sheth further pointed out that the authority concerned will not be in a position to examine the issue of refund of the amount towards IGST under the provisions of the Act. In such circumstances, Mr. Sheth seeks a writ from this Court to the authority for the purpose of refund.

6 We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of **Mohit Minerals (supra)**. The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order.

7 With the above, this writ application stands disposed of. Direct service is permitted.