

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11540 of 2021**

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M/S LOUIS DREYFUS COMPANY INDIA PRIVATE LIMITED
Versus
UNION OF INDIA

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Appearance:

MR.PARTH CONTRACTOR(7150) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 1,2,4
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 07/07/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr. Kishore Kunal with learned advocate Mr. Parth Contractor for the petitioner and learned advocate Mr. Nikunt Raval for the respondent No.3.

2. The petitioner-private limited company engaged in the business of processing of edible oils and coffee etc. has by filling the present Special Civil Application prayed to direct the respondents to refund the Integrated Goods and Services Tax (hereinafter referred to as "IGST") calculated on the amount of ocean freight charges with interest. It was further prayed to prohibit the respondent authorities from collecting the IGST in terms of Notification No. 10 of 2017 - Integrated Tax (Rate) dated 28.6.2017 and Notification No. 8 of 2017 – Integrated Tax (Rate) of even date read with corrigendum dated 30.6.2017.

3. With the commencement of levy of Goods and Services Tax under the law with effect from 1.7.2017, the Notification No. 8 of 2017 dated 28.6.2017 provided that the IGST at the rate of 5% shall be levied on inter-state supply of services when the goods are transported in a vessel etc.. Another Notification No. 10 of 2017 dated 28.6.2017 came to be

issued notifying that in respect of services supplied by a person located in the non-taxable territory by way of transportation of goods by vessel from a place outside India upto the Custom Clearance Station in India, the entire IGST shall be paid on the reverse charge basis by the importer. The corrigendum dated 30.6.2017 was issued. It was provided therein that in the circumstances mentioned therein, the IGST shall be collected at the rate of 10% of the CIF value.

4. While the various contentions are raised in the petition, it is stated that the aforementioned Notification Nos. 8 of 2017 and 10 of 2017 both dated 28.6.2017 read with corrigendum dated 30.6.2017 came up for consideration for their validity before this court. This court in **Mohit Minerals Pvt. Ltd. vs. Union of India being Special Civil Application No. 726 of 2018** decided on 23rd January, 2020 held the said notifications to be unconstitutional and *ultra vires* the statute. The decision has been followed in **Gokul Agro Resources Ltd. vs. UOI [2020 (35) GSTL 82 (Guj.)]**, **Bharat Oman Refineries Ltd. vs. Union of India [2020 (41) GSTL 292 (Guj.)]** and in **Comsol Energy Private Limited vs. State of Gujarat [TS-1241-HS(GUJ)-2020-GST]**.

5. The above position and law emanating from the decision of this court in **Mohit Minerals Pvt. Ltd. (supra)** could not be disputed by learned advocates for the respective parties. It may also be mentioned that similar issue came up for consideration before the co-ordinate Bench in **ADI Enterprises vs. Union of India being Misc. Civil Application No. 1 of 2020 in Special Civil Application No. 10479 of 2019**, wherein the question was about refund of the IGST paid pursuant to the aforementioned Notifications. The court directed respondents to refund the amount of IGST already paid by the applicants pursuant to Entry No.10 of Notification No. 10 of 2017. In **ADI Enterprises (supra)**, the court recorded thus in para 3,

“Learned advocate appearing for the applicant would submit that the reason for filing the present application is that vires of Entry No.10 of Notification No.10/2017- IGST (Rate) dated 28.6.2017 issued under the Integrated Goods and Services Tax Act, 2017 was challenged by the applicant by way of captioned writ petition along with other identical writ petitions. The Division Bench of this Court vide judgment and order dated 23.1.2020 passed in the captioned writ petition along with other writ petitions allowed the writ petitions and declared Entry No.10 of Notification No.10/2017-IGST (Rate) dated 28.6.2017 as ultra vires the Act. He would further submit that during the pendency of the present application, Civil Appeal No.1390 of 2022 and allied appeals preferred at the instance of the respondents also came to be dismissed by judgment and order dated 19.5.2022 passed by Hon'ble Apex Court.

5.1 The court thereafter directed in para 4 as under,

“In view of the above, we are of the opinion that the present application requires consideration and hence, the same is allowed in terms of prayer 6 (a). The respondents are hereby directed to grant refund of the amount of IGST already paid by the applicants pursuant to the Entry No.10 of Notification No.10/2017-IGST (Rate) dated 28.6.2017 along with statutory rate of interest on such refund within a period of four weeks from the date of submission of necessary documents by the applicants.”

6. In view of the decision in **Mohit Minerals Pvt. Ltd. (supra)**, since the impugned Notifications have already been declared as *ultra vires*, present petition deserves to be allowed.

7. Accordingly, the petition is allowed in terms of para Nos. 13(A) and 13(B). It is directed that if any IGST amount is collected, the same shall be refunded within six weeks alongwith statutory rate of interest.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

C.M. JOSHI