IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDITION

WRIT PETITION NO. 184 OF 2019

M/s. Sanathan Textile Pvt Ltd.
A company registered under Companies Act, 1956
having its Registered office at Survey Plot No.
187/4/1/2,250, 251 P257/1 & 258/3, Surangi,
Silvassa -396230, Dadra & Nagar Haveli … Petitioner

Versus

1. Union of India, through the
Secretary, Ministry of Finance,
Department of Revenue,
Aykar Bhavan, Marine Lines
MUMBAI-400 020.

2. Central Board of Indirect Taxes and Customs
Government of India
Ministry of Finance
Department of Revenue
North Block, New Delhi

3. Commissioner of Goods & Services Tax (GST)
Surat Commissionerate (Audit)
Surat (Vapi), 3rd Floor, Times Square,
Survey No. 340-B, Vapi-Daman Road,
Chala, Vapi-396 191. …Respondents

Mr. Raghavendra with Mr. P. K. Shetty with, Mr. Shailesh Sheth for the Petitioner.
Mr. Jitendra B. Sharma for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON 12th FEBRUARY, 2024
PRONOUNCED ON 4th MARCH, 2024

JUDGEMENT (Per G.S.KUKLARNI,J.):-

1. The Petitioner is a company incorporated under the Companies Act, 1956, and is a manufacturer of fully drawn yarn, air texturized yarn and cotton yarn at its unit at Silvassa. It is contended that the Petitioner is one of the top yarn manufacturing units in India. In the course of its activity, the Petitioner imports various raw material, namely, Purified Terephthalic Acid (PTA) and Mono Ethylene Glycol (MEG) used in the manufacture of the final product. The Petitioner is also importing certain spare parts and accessories required for its plant and machinery. Such raw materials, spare parts and accessories for machinery are being imported by the Petitioner from the foreign suppliers under CIF (Cost, Insurance and Freight) Contract, wherein the entire cost of transportation of goods upto the customs station in India is incurred by the foreign supplier.

2. It is the Petitioner's case that, during the period from 23rd April 2017 to 30th June 2017, the Petitioner imported required raw materials and spare parts for machinery under different bills of entry, the description of which is set out in paragraph no. 3.3 of the Petition. The bills of entry are 10 in number and are issued between 15th May 2017 to 24th June 2017. It is contended that

Respondent No. 3 conducted an audit and issued final report No.52/2018/-19 dated 16th May 2018 demanding payment of service tax Rs. 26,04,895/-, for the period April 2017 to June 2017 on the value of the imports as set out in the chart contained in Paragraph 3.3 of the Petition. It is contended by the Petitioner that accordingly, for Unit No.1, the Petitioner has paid service tax of Rs. 23,10,961/-(service tax of Rs. 21,56,897/-, SBC Rs. 77,032/- and KKC Rs. 77,033/-) along with interest of Rs. 2,93,934/- vide GAR-7, Challan dated 2nd May 2018.

3. The Petitioner contends that Chapter V of Finance Act, 1994 was recast by the Finance Act, 2012 for introducing new regime of tax referred as *"Negative List of Taxation Scheme"* w.e.f. 1st July 2012. Under such amendment, **Section 66 D(p)** was incorporated to deal with *"Services by way of transportation of goods".* It is contended that sub-clause (ii) thereof was omitted by the Finance Act, 2016 w.e.f. 1st June 2016. It is the case of the Petitioner that transportation of goods in a vessel provided by a person located in non taxable territory to the person located in non-taxable territory was exempted from service tax available vide Sl. No. 34 of the Notification No.25/2012-ST and the same was made inapplicable w.e.f. 22nd January 2017, vide Notification No.1/2017-ST dated 12.01.2017. It is further contended that Service Tax Rules, 1994 were amended by Service Tax (Amendment) Rules, 2017, vide Notification No. 2/2017-ST dated 12th January 2017, wherein Rule

2 sub-rule (1), clause (d) and sub-clause (i) was amended to insert a new item (EEC) for taxing *"ocean freight"* w.e.f. 22nd January 2017. It is further contended that Notification No.30/2012-ST dated 20th June 2012 providing for *'Reverse Charge System'* was amended vide Notification No.3/2012-ST dated 12th January 2017 to insert entry to prescribe *'Reverse Charge Mechanism'* for the transportation of goods in a vessel. Further in the definition of *'person liable to pay service tax'* vide Rule 2(1)(d)(i), the item (EEC) was substituted by Notification No. 16/2017-ST dated 13th April 2017 to provide that *'importer of goods'* as per Section 2(26) of Customs Act, 1962 shall be the person liable to pay service tax with retrospective effect from 22nd January 2017.

4. The Petitioner has contended that, under the GST regime, IGST at 5% is imposed on the importer on transportation of goods in a vessel provided by a person located in a non-taxable territory to a person located in non-taxable territory from a place outside India up to the customs station for clearance in India vide Entry No.9(ii) in Notification No. 8/2017-Integrated Tax (Rate) with corrigendum dated 30th June 2017. It is stated that, further, vide Entry No. 10/2017-IT(Rate), the importer, as per section 2(26) of the Customs Act, 1962, is deemed to be the recipient of service and liable to pay IGST on the services supplied by persons located in non-taxable territory by way of

transportation of goods, by a vessel from a place outside India upto the customs station for clearance in India.

5. On the above premise, the contention of the Petitioner is to the effect that IGST on the transportation of goods in a vessel from a place outside India upto the customs station of clearance in India on the importer, on reverse charge basis, is arbitrary and illegal. It is contended that levy of service tax on the importer, who is neither the service provider nor the service receiver, is sought to be made in terms of the power conferred under sub-section (3) of Section 5 of the IGST Act. It is contended that, in any event, levy and collection of service tax/IGST from an Indian importer in respect of goods (in respect of CIF contracts), on service rendered outside India, in a non-taxable territory, is unconstitutional. The service tax on ocean freight payable by the importer under reverse charge mechanism would not be legal and valid. Thus, raising such challenge the Petitioner has prayed for the following reliefs:-

> *"(a) Issue a Writ of Certiorari or any other appropriate writ or direction under Article 226/227 of the Constitution of India declaring the impugned notifications dated 28/6/1954 (**Exhibit A**) issued under Finance Act, 1994 and impugned notification (Exhibit F) issued under IGST Act, 2017 to be unconstitutional being contrary to 245/246/246A.*
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> *(b) Issue a Writ of Certiorari or any other appropriate writ or direction under Article 226/227 of the Constitution of India declaring the impugned notifications (Exhibit A) issued under Finance Act, 1994 dated 28/6/1994 being ultra vires and contrary to the provisions of Section 68(2) read with Section 66B and Section 64(1) of the Finance Act, 1994 to the extent challenged herein.*
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> *(c) Issue a Writ of Declaration or certiorari or any other appropriate writ or direction under Article 226/227 of the Constitution of India declaring the impugned notifications (Exhibit - F) to be ultra vires and contrary to the provisions of Section 5 of the IGST Act to the extent challenged herein.*

(d) Issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ order or direction, directing the Respondents not to recover Service Tax/IGST from the Importer on the service of transportation of goods, in a vessel provided by a person located in a non-taxable territory to a person located in a non-taxable territory and further to refund taxes with interest where already recovered;

(c) issue a writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction restraining the Respondents, their subordinates, servants and agents from in any manner whatsoever levying, collecting and recovering service tax/IGST, from the Importer on the service of transportation of goods, in a vessel provided by a person located in a non-taxable territory to a person located in a non-taxable territory;

(f) pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to restrain the Respondents, their subordinates, servants and agents from in any manner whatsoever raising demands or taking any action, directly or indirectly for the purposes of levying, collecting and recovering Service tax/IGST, from the Importer on the service of transportation of goods, in a vessel provided by a person located in a non-taxable territory to a person located in a non-taxable territory;

(g) direct the respondent no. 3 to grant refund of service tax/IGST, if any paid by the petitioner under protest;

(h) for interim and ad-interim reliefs in terms of prayer (f) above;

(i) for costs of the Writ Petition and orders thereon; and

(j) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

6. Reply Affidavit is filed on behalf of the Respondents opposing the Petition.

7. We had heard the proceedings on the earlier occasion, when the learned Counsel for the Petitioner had contended that the notifications as impugned in the Petition were subject matter of adjudication before the Division Bench of the Gujarat High Court in the proceedings of **SAL Steel Ltd. Vs. Union of India**[1] as also such decision of the division bench was considered by the

1 2020 (37) G.S.T.I.. 3 (Guj.)

Tribunal in the case of **Commissioner of Service Tax, Ahmedabad vs. Kiri Dyes and Chemicals Ltd[2].** The Tribunal following the decision of the division bench had accepted the Assessee's contention in regard to the service tax on ocean freight under reverse charge as payable by the importer to be illegal. Such decision of the Tribunal was confirmed by the Supreme Court in dismissing the Revenue's Appeal. This Court accordingly considering such contentions had passed the following Order on 29th January 2024:-

> *"1. The primary contention of the petitioner is that the challenge to the impugned Notifications (Exhibit A) would stand covered by the decision of the Division Bench of Gujarat High Court in* ***SAL Steel Ltd. vs. Union of India*** *whereby the notification has been quashed and set aside and the petitioner was granted all consequential benefits.*
>
> *2. We are also informed that the decision in* ***SAL Steel Ltd.*** *(supra) was followed by the Tribunal in the case of* ***Commissioner of Service Tax, Ahmedabad vs. Kiri Dyes and Chemical Ltd.*** *The decision of the Tribunal in Kiri Dyes and Chemical Ltd. was carried in appeal by the department before the Supreme Court. The Supreme Court confirmed the decision of the Tribunal by dismissing the appeal filed by the department in the case of* ***Commissioner of Service Tax vs. Kiri Dyes and Chemicals Ltd.***
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> *3. Insofar as the Notification (Exhibit F) is concerned, learned counsel for the petitioner would submit that the same is the subject matter of prayer clause (c) as also partly prayer clause (a) would stand covered by the decision of the Supreme Court in* ***Union of India vs. Mohit Minerals Pvt. Ltd.***
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> *4. However, as we have noted that there is deficiency in the memo of the petition on the count that the relevant facts are not pleaded, we grant an opportunity to the petitioner to place on record the relevant facts by permitting the petitioner to amend the petition. Accordingly, leave to amend to place on record the relevant facts on record in respect of cause of action which has arisen to the petitioner to assail the impugned notifications as also to add an additional prayer, if any.*
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> *5. Amendment be carried out within one week from today and*

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2 (2023) 10 Centax 134 (Tri.-Ahmd)

copy of the amended petition be served on the advocate for the respondents. Reverification is dispensed with.

6. Also on behalf of the respondents, instructions be taken on the contentions as urged on behalf of the petitioner as noted by us hereinabove.

7. Stand over to ***12 February, 2024 (H.O.B.).***

8. Parties are put to notice that on the adjourned date of hearing, the Court shall hear the parties on the present proceedings finally and an endeavour would be made to dispose of the petition."

8. It it on the above backdrop, the proceedings are before us today. We have heard learned Counsel for the parties. We have perused the record.

9. At the outset we may observe that the division bench of the Gujarat High Court in **SAL Steel Ltd.** (supra) had considered the challenge to the impugned notifications in the context of the service tax on transportation of goods by a vessel from a place outside India. The impugned provisions were held *ultra vires* of Section 64, 65(B), 44, 66(B), 67 and 68 and 94 of the Finance Act, 1994. It was held that importers in CIF contracts were neither service providers nor service receivers in respect of transport of goods by vessel from place outside India, and that service tax cannot be recovered from third party who is neither the service provider nor the service receiver.

10. In such context, the observations as made by the Court are required to be noted which reads thus:-

"31. A perusal of Section 94 shows that there is no power conferred upon the Central Government to make any Rules or Notifications for extra territorial events; or in other words, for services rendered and consumed beyond the "taxable territory" i.e. beyond India. Obviously, the Act itself is not applicable to the territories other than India and therefore the Executives cannot have any power to make Rules for territories beyond India.

33. The impugned provisions are also ultra vires the Rule making power of Section 94 of the Finance Act.

34. As observed above, the person receiving service of sea transportation in CIF contracts is the seller-supplier of the goods located in a foreign territory. The Indian importers like the writ applicants are not the persons receiving sea transportation service, because they receive the "goods" contracted by them, and they have no privity of contract with the shipping line nor does the Indian importer make any payment of ocean freight to the service provider. But the impugned provisions make such "importer" liable to pay service tax; and therefore such provisions allowing the Central Government to recover service tax from a third party are ultra vires the statutory provisions of the Finance Act, as discussed below.

35. The charging section 66B provides for levy of service tax on the value of "services", other than those specified in the Negative List. The term "service" is defined under Section 65B(44) to mean any activity carried out by a person for another for consideration. Thus, service is an activity carried out by a person (i.e. the service provider) for another person (i.e. the receiver of service). Only two parties are recognized by the Parliament in regard to "service" viz. the service provider and the recipient of service.

37. By virtue of Sub Section (2) of Section 68, the Central Government has power to shift the liability to pay service tax; the method which is popularly known as reverse charge mechanism, under which service tax is collected from the recipient of service. Notification No. 30/2012-ST issued under Section 65(2) of the Finance Act is for reverse charge system; and the table under para (II) of the Notification shows that the Central Government has shifted the burden to pay service tax to the person receiving the service by virtue of Col. No. 4 of the table. Thus, the reverse charge system under Section 68(2) of the Finance Act permits the Central Government to collect or recover service tax from the receiver of service, though the primary charge is on the person providing taxable service by virtue of Sub Section (1) of Section 68.

38. But the importers in CIF contracts i.e. the writ applicants herein are neither service providers nor service receivers in respect of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India. Section 68(1) and also the reverse charge Notification under Section 68(2) permit the Central Government to collect and recover service tax only from the person providing the service or from the person receiving the service, and not from a third party. The rulemaking power of section 94 also does not permit the Central Government to make rules for recovering service tax from a third party who is neither the service provider nor the service receiver.

39. Therefore, the impugned provisions i.e. Rule 2 (1)(d)(EEC) and Explanation-V to Notification No. 30/2012-ST are ultra vires Section 65B(44) defining "service" and Section 68, and also Section 94 of the Finance Act.

43. When the Respondents have admitted that the importers in India are not persons receiving service of sea transportation, and that it is the Respondent's case that the Indian importers were "indirectly" receiving such service and hence were persons liable to pay service tax on such service; it is clearly a case where the Respondents propose to charge service tax from the third parties i.e. the Indian importers by implication, and not by clear words

of the charging section. The impugned provisions creating a charge of service tax on third parties though the Act of the Parliament provides for levy and collection of tax either from the person providing service or from the person receiving service are beyond the charging provision, and also beyond the Rulemaking power of Section 94 of the Finance Act.

45. A charging provision and the machinery provision are two sides of the same coin. A substantial provisions of chargeability and the machinery provisions of valuation have a navel relationship of cause and effect with the result that one cannot survive without the other, and they are inseparable pillars of an integral tax code. The observations of the Mumbai High Court at para 41 in Satellite Television Asian Region Ltd. reported in MANU/IU/0002/2006, and by the Supreme Court at para 10 in CIT Bangalore V/s. B. C. Srinivas Setty, AIR 1981 SC 1972 are relevant in this regard, because it is held in these cases that if the computation provision cannot be applied, then the substantial provisions of chargeability become redundant.

46. In the present cases, since the value of ocean freight is not available, Sub Rule (7CA) is inserted in Rule 6 of the Service Tax Rules thereby giving an option to the importer to pay service tax on 1.4% of CIF value of imported goods. But this insertion of Sub Rule (7CA) in Rule 6 is also ultra vires the machinery provision of Section 67, and also rule making power of Section 94.

47. There is no power conferred upon the Central Government under Section 94 to fix value of any service, the way such power is conferred upon the Board under Section 14(2) of the Customs Act, 1962. In absence of any power vested in the Central Government to fix value of any service by way of making a rule or a notification, Rule 6 (7CA) of the Service Tax Rules is ultra vires the Rulemaking power. Secondly, it is an option under Rule 6 (7CA) to pay service tax on the amount calculated @1.5% of CIF value of the imported goods; but if the importer does not exercise this option, then there is void because actual value of this service i.e. ocean freight is not known even to the Revenue officers. Therefore, the scheme of taxation would fail and fall in absence of a machinery provision for valuation of the service when tax is proposed to be recovered from a third party not having any information about the value of such service.

58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos. 15/2017-S.T. and 16/2017-S.T. making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No. 30/2012-S.T. is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits."

11. Following the decision of the division bench in **SAL Steel Ltd.** (supra), the Central Excise and Service Tax Appellate Tribunal in the case of

Commissioner of Service Tax, Ahmedabad (supra) dismissed the Revenue's Appeal passed the following Order:-

> *" The issue involved in the present case is whether the appellant is liable to pay service tax on the service on Ocean Freight or otherwise.*
>
> *2. Shri Sanjay Kumar, learned Superintendent (AR) appearing on behalf of Revenue/Appellant submits that though this issue is decided by Hon'ble Gujarat High Court in the case of SAL Steel Limited but the Revenue has preferred SLP before the Hon'ble Supreme Court therefore, this matter may be kept pending till outcome of Hon'ble Supreme Court judgment.*
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> *3. Shri R. R. Dave, learned Consultant appearing on behalf of the respondent/ Assessee submits that learned Commissioner (Appeals) following the judicial discipline by relying upon the Hon'ble Gujarat High Court in the case of SAL Steel Limited allowed the appeal of the respondent therefore, there is no infirmity in Order-in-Appeal and the Revenue's appellant is not maintainable. As regards the Revenue's contention that the Revenue's appeal is pending before the Hon'ble Supreme Court in the case of SAL Steel Limited, he submits that there is no stay against the Hon'ble Gujarat High Court order. He placed reliance on the Hon'ble Supreme Court decision in the case of Union of India v. Mohit Minerals Pvt. Limited 2022 (61) GSTL 257 (SC).*
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> *4. I have carefully considered the submissions made by both the sides and perused the record. I find that the issue whether Ocean Freight/Sea Transportation service is liable to service tax or otherwise has been decided by jurisdictional High Court of Gujarat in the case of SAL Steel Limited. As regards the Revenue's appeal pending before the Hon'ble Supreme Court against the aforesaid decision, I find that there is no stay against the said High Court judgment. In view of this position, I find no infirmity in the impugned order which was passed relying on the jurisdictional High Court judgment in the case of SAL Steel Limited. Accordingly, following the Hon'ble Gujarat High Court decision in the case of SAL Steel Limited, the impugned order is upheld and the Revenue's appeal is dismissed. Cross objection is also disposed of."*

12. The aforesaid decision of the Tribunal was carried in Appeal by the Revenue before the Supreme Court. The Supreme Court in ***Commissioner of Service Tax, Ahmedabad*** (supra), dismissed the Civil Appeal filed by the Revenue by an Order dated 01.09.2023 passed on Civil Appeal Diary No.2146/2023.

13. We may observe that the similar issue as fell for consideration before the Madras High Court in the case of **Chennai & Ennore Ports Steamer Agents Association Vs. Union of India[3],** in such decision the Court had considered the decision of the Division Bench of the Gujarat High Court in **SAL Steel Ltd.** (supra) in considering the issue namely, whether the members of the Petitioner were liable to pay service tax on the service of ocean freight. Rejecting the case of the Revenue and accepting the case of the Assessee, the Madras High Court, making the following observations, allowed the Writ Petitions by setting aside the show cause notices issued to the respective Petitioners. The Relevant observations of the Court which require to be noted, read thus:-

> *"121. In CIF contracts, the service of transportation of goods by vessel is received by the foreign exporters/overseas supplier from the foreign/overseas vessel owner/operator/Shipping Liners in the CIF contract. The value of all incidental services consumed in the course of import of goods is built into the import value of the import goods. Customs duty is already paid by the importers on these values. To that extent, there is no justification to burden the importers who will be forced to bear the incidence of the levy on again.*
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> *122. The transaction value for the purpose of custom duty and additional duty of custom equivalent to the excise duty (ADC), includes the value of ocean freight. Therefore, importers cannot be mulcted with the double tax on the ocean freight either directly or indirectly particularly in a CIF contracts.*
>
> *123. The value of incidence of such intermediate services availed by the Shipping Liners will be passed on by the Shipping Liners to the Foreign Shippers and eventually to the importers. This value gets taxed in the case of CIF Contract. In the case of FOB contracts, the importers have to in any event include the value under Section 14 of the Customs Act, 1962. Thus, to tax, the overseas freight twice is also uncalled.*
>
> *124. Such cost of such transportation is factored into the price of the shipment and such cost of such shipment gets built into the transaction value of the import goods at the time and place of importation. Computation of service tax in CIF contract is impossible. That apart, in view of the Division Bench of the Gujarat High in Sal Steel Ltd Vs. Union of India, (2020) 37 G.S.T.L. 3/[2020] 117 Taxmann.com619, no tax can be*

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3 (2023) 10 Centax 135 (S.C.)

demanded on an ocean freight or importers.

125. Neither the importer in India who imports the goods at the place of destination in India will have an idea as to the cost of such services which are in built and borne by the foreign shipping liners nor the steamer agents who book cargo for and behalf of a shipping liner.

126. Further, in the case of contracts on a CIF (Cost, Freight and Insurance), the foreign supplier-exporter engages the services of the Overseas Shipping Liner and is responsible for arranging transportation and insurance of the goods. The consideration for shipping the goods is payable by the foreign supplier in the case of CIF contracts to the foreign/Overseas Shipping Liner.

130. We therefore, hold that service tax cannot be demanded from these petitioners as neither the "steamer agents" nor the "importers" in India are the recipient of service. They are not liable to pay tax.

149. In Kusum Ingots and Alloys Ltd. Vs. Union of India, 2004 (168) E.L.T. 3 (S.C.), it was held that an order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act. If that be so, the notices which have been challenged by the category II writ petitioner in Table 5 are also liable to be quashed. However, we would not go that far to hold all the notifications challenged as ultra-vires.

160. As far as refunds are concerned in Table No. 6, the petitioners will have to file appropriate refund applications for refund of the amounts which are said to have been paid by them in accordance with the law laid down by the Hon'ble Supreme Court in Mafatlal Industries Private Limited vs. Union of India, 1997 (89) E.L.T.(S.C.).

164. In the result, it is held as follow:-

i. The challenges to Section 66(2) of the Finance Act, 1994, impugned Circular No. 206/4/2017-Service Tax, dated 13.04.2017 and impugned Notifications issued by the Central Government under the provisions of the Finance Act, 1994 fail. Therefore, Writ Petitions in Table, 1,2,3 4 are liable to be dismissed and are accordingly dismissed.

ii. These petitioners are however not the recipient of service for the purpose of the impugned Notification No. 3/2017-ST dated 12.01.2017 amending Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act,1994.

iii. Therefore, there is no scope for demanding service tax from these petitioners in view of the defects pointed out in the impugned Notification No. 3/2017-ST dated 12.01.2017 amending Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act, 1994. Therefore, there is no justification in the impugned Show Cause Notices in Table-5. These show cause notices are therefore quashed.

iv. The respondents shall also not issue any show cause notices to the importers and steamer agents for the period covered by this order ie. for the period between 22-1-2017 and 30-6-2017 for similar activity.

v. As far as refunds in Table 6 are concerned, the petitioners are directed to file refund claims within 30 days from the date of receipt of a copy of this order, if no claim has already been made.

vi. All the refund claims shall be disposed of within a period of 60 days or 90 days, as the case may be, in accordance with the law laid down by the Hon'ble Supreme Court in Mafatlal Industries Private Limited vs. Union of India, 1997 (89) E.L.T.(S.C.).”

14. We find ourselves in complete agreement with the view taken by the Division Bench of the Gujarat in **SAL Steel Ltd.**(supra) as also by the Division Bench of the Madras High Court in **Chennai & Ennore Ports Steamer Agents Association** (supra). Thus, the Petitioners' challenge to the impugned notifications as prayed for in prayer clause (a) needs to succeed on the ground that the said notifications were set aside in the case of **SAL Steel Ltd.**(supra).

15. In so far as the impugned notification at Exhibit-F is concerned being subject matter of prayer (c) as also partly prayer clause (a), it appears that such challenge would stand covered by the decision in **Union of India Vs. Mohit Minerals Pvt. Ltd**[4] in which the Supreme Court has held that the IGST and CGST define reverse charge and prescribe the entity that is to be taxed for those purposes. It was held that the specification of the recipient by Notification No. 10/2017 is only clarificatory and that the Government by notification did not specify a taxable person different from the recipient

4 2022 (61) G. S. T. L. 257 (S.C.)

prescribed in Section 5 (3) of the IGST Act for the purposes of reverse charge. It was held that levy imposed, on the service aspect of the transaction was in violation of principles of *'composite supply'* enshrined under Section 2(30) read with section 8 of the GST Act. Since the Indian importer is liable to pay IGST on the *'composite supply'* comprising of supply of goods and supply of services of transportation, insurance etc. in CIF contract, a separate levy on the Indian importer for the *'supply of services'* by the shipping line would be violative of Section 8 of the GST Act. There is no dispute that such relief as prayed for stands covered by the decision of the Supreme Court in **Union of India Vs. Mohit Minerals Pvt. Ltd**(supra).

16. Mr. Mishra's contention that the Petitioner had voluntarily deposited the amount and hence the Petitioner would not be correct in seeking any refund, is also not acceptable. Any such deposit or even demand would certainly be without authority in law and therefore violative of Article 265 of the Constitution. The observations in this regard as made by the Madras High Court, following the decision of the Supreme Court in **Mafatlal Industries Vs. Union of India**[5], in our opinion, are apposite. It would be thus necessary that the Petitioner makes a refund application claiming the said amount, which would be required to be decided on its own merit.

17. Accordingly, we partly allow the Petition by the following Order:-

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5 *MANU/SC/1203/1997*

Order

i. The impugned Notifications at Exhibits-A and F are held to be illegal as held by the Gujarat High Court in **SAL Steel Ltd**(supra).

ii. The Petitioner would accordingly be entitled to the refund of duty, however, subject to the Petitioner filing the refund application which would be required to be decided in accordance with law including on the principles unjust enrichment.

iii. Disposed of in the above terms. No Costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI, J.)