



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA



ON THE 22<sup>nd</sup> DAY OF AUGUST, 2022.

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION No.1085 of 2019.

Between:-

INDORAMA INDUSTRIES LIMITED PLOT  
NO.10, LODHI MAJRA, BADDI, HIMACHAL  
PRADESH THROUGH CHIEF FINANCIAL  
OFFICER.

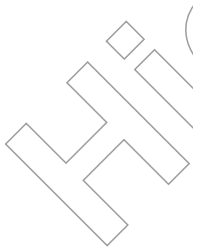
.....PETITIONER.

(BY SH. RAJAT BOSE, SH.ANUJ GUPTA  
AND MS. SHOHINI BHATTACHARYA,  
ADVOCATES)

AND

1. UNION OF INDIA THROUGH ITS  
SECRETARY, DEPARTMENT OF REVENUE,  
MINISTRY OF FINANCE, NORTH BLOCK,  
NEW DELHI.
2. GOODS AND SERVICES TAX COUNCIL,  
OFFICE OF THE GSTC THROUGH ITS  
SECRETARY, TOWER-II, 5TH FLOOR,  
JEEVAN BHARTI BUILDING, NEW DELHI-  
110001.

.....RESPONDENTS.



**(SH. VIR BAHADUR VERMA, CENTRAL  
GOVERNMENT STANDING COUNSEL, FOR  
RESPONDENT-1)**



**(SH. VIJAY KUMAR ARORA, ADVOCATE,  
FOR RESPONDENT-2).**

---

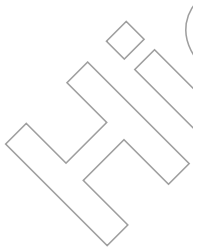
*This petition coming on for hearing this day, **Hon'ble  
Mr. Justice Tarlok Singh Chauhan**, passed the following:*

**ORDER**

The instant petition has been filed for grant of the following substantive reliefs:-

“11.1. Issue a Writ of certiorari/mandamus or any other appropriate Writ/order/direction against the Respondents by quashing 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 by declaring that same lack legislative competency, ultra vires to the Integrated Goods and Services Tax Act, 2017 and hence unconstitutional; and/or

11.2. Issue a Writ of certiorari/mandamus or any other appropriate Writ/order/direction against the Respondents by declaring that no tax is leviable under the Integrated Goods and Services Tax Act, 2017 on services supplied by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods

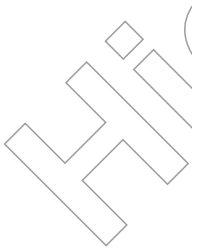



by a vessel from a place outside India up to the customs station of clearance in India and levy and collection of tax on such services under the Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017 is not permissible under the law and by any stretch of imagination the same is never recoverable from an 'importer' defined under clause 2(26) of the Customs Act, 1962 as stated in entry 10 of the Notification No.10/2017-Integrated Tax (Rate), dated 28-6-2017; and/or

11.3. Issue a writ of mandamus/order/direction to the Respondent No.1 to refund the IGST of INR 114.00 Lakhs and interest of INR 6.29 Lakhs deposited by the Petitioner (from July 2017-till date) under Entry 10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28-6-2017 along with interest on such entire payment; and/or

11.4. Issue a writ of mandamus/order/direction to the Respondent No.2 to place before this Hon'ble Court the records of the recommendations given and all decisions taken in respect of impugned Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017 and the Notification No.10/2017-Integrated Tax (Rate), dated 28-6-2017; and/or

11.5 In alternative to above, issue a writ of mandamus/order/direction to the Respondents to allow the Input Tax Credit of IGST paid by the Petitioner in terms of entry 10 of the Notification No.10/2017-Integrated Tax (Rate), dated



28-6-2017 as 'importer' under clause 2(26) of the Customs Act on services supplied by a person located in non-taxable territory to a person located in 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/or." 

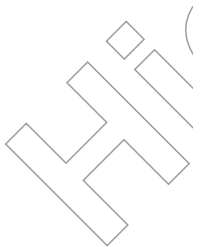
2. On 01.08.2022, the Court passed the following order:-

"Learned counsel for the petitioner states that the issue in question is no longer *res integra* in view of the judgment rendered by three Judges Bench of the Hon'ble Supreme Court in **Union of India vs. M/s Mohit Minerals Pvt. Ltd.**, decided on 19.05.2022.

Confronted with this, Mr. Shashi Shirshoo, Central Government Standing Counsel, for respondent No.1 and Mr. Vijay Arora, Advocate, for respondent No.2, pray for and are granted two weeks' time to go through the said judgment.

List on 22.08.2022."

3. Today, the learned counsel for the parties after obtaining instructions from their respective parties are *ad idem* that the issue in question is no longer *res integra* in view of of the judgment rendered (supra) in Part-D of the

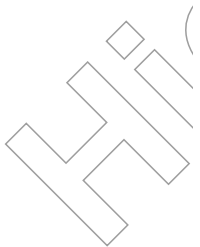


judgment from para-132 onwards and conclusion as reached in para-148(c)(v) which reads as under:-




“(c) The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A(4) are binding on the legislature’s power to enact primary legislations;

(v) The impugned levy imposed on the ‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under Section 2(30) read with Section 8 of the CGST 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 a CIF contract, a separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of Section 8 of the CGST Act.”



4. Since, the instant petition is squarely covered by the judgment rendered by the Hon’ble Supreme Court, the same is accordingly allowed and respondent No.1 is directed to refund the amount along with interest strictly in accordance with the judgment in **M/s Mohit Minerals Pvt.**

**Ltd.'s case** (supra) as expeditiously as possible and in any event by **30.11.2022.** 

5. Pending application, if any, also stands disposed of.

**(Tarlok Singh Chauhan)**  
**Judge**

**(Virender Singh)**  
**Judge**

**22<sup>nd</sup> August, 2022.**  
**(krt)**

