

Litigation on RCM on Ocean Freight in CIF Imports

In the initial year of GST, the importers were notified by Notification No. 8/2017-Integrated Tax [Rate] dated 28th June 2017 and Entry 10 of the Notification No. 10/2017- Integrated Tax [Rate] also dated 28th June 2017. It was under the dispute from day one and litigation on RCM on Ocean freight is expanding with time. But the litigation started from advance ruling of Mohit Minerals is still in process with the interim relief to M/S INDIA COKE AND POWER PRIVATE LIMITED. Gujarat High court is observing both the cases. Following three points make a strong case in favour of CIF importers.

[a] having paid the tax under IGST Act on the entire value of imports; inclusive of the ocean freight, the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification;

[b] In case of CIF contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism, and

[c] In case of High Sea sales, the burden are cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all.

An interim relief is given,

“In the meanwhile, no coercive steps shall be taken against the petitioner pursuant to the impugned notification.”

There are already many writ petitions filed before various High Courts across India challenging levy on ocean freight.

Comments- As per the above discussion, the contentions can be taken against this levy can be as under:-

– Importer cannot be considered services recipient. Section 5(3) of IGST Act, 2017 is charging section of RCM and it provides that RCM can be paid by recipient of service. But since the importer is not recipient in instant case then RCM is not payable by importer.

_the service provider and service recipient both are outside the territory of India and as such the GST is not payable on the same.

- Notification is travelling beyond the scope of section
- At the time of import of goods, IGST is already paid on the complete value of goods including the ocean freight and hence it amounting double taxation. It should be avoided.
- In case of goods imported on CIF basis, value of goods and transportation is composite supply and the same cannot be artificially bifurcated

Further, even if tax paid tax under RCM, there would be challenges on input tax credit since one of the condition for availing input tax credit, service has to be received.

If the decision comes in favour of the importers, it will bring immense relief to the complete import industry.

This issue is travelling from the time of service tax and is disputed since then. The department started taking paras in audit when GST has come. As such, the credit is not available to assessee and complete loss to him. In GST regime, the credit is not available of period of 2017-18 now. The department will raise the demand. But thank God, Gujarat High Court decision in case of AAP & company has come and it will rescue the trade and industry.
