

Allowed refund of IGST paid on ocean freight beyond limitation period prescribed under GST Law: The Hon'ble High Court, Gujarat

Fact of the Case

M/s Comsol Energy Private Limited ("the Writ-Applicant") filed the refund claims of IGST paid on ocean freight under the RCM after the decision of Hon'ble High Court, Gujarat in Mohit Minerals (Pvt.) Ltd. v. Union of India and others [Special Civil Application No. 726 of 2018 dated January 23, 2020] in which it was held that the Notification No. 8/2017 – Integrated Tax (Rate) dated June 28, 2017, and Entry No. 10 of the Notification No. 10/2017 – Integrated Tax (Rate) dated June 28, 2017, lack legislative competency and the same were declared as unconstitutional.

The Department ("the Respondent") issued the Deficiency Memo dated July 17, 2020 ("Impugned Deficiency Memo") upon filing of the refund claims and stated that these were not filed within the statutory time limit under Section 54 of the CGST Act and special category for claiming refund of such amount is not provided by Section 54 of the CGST Act.

Being aggrieved by the Impugned Deficiency Memo, writ-application has been filed.

Issue:

Whether the Writ-Applicant can be allowed refund of IGST paid on ocean freight under RCM beyond time limit prescribed Section 54 of the CGST Act?

Decision of the Case

The Hon'ble High Court, Gujarat has decided as under:

- ❖ Observed that, Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Respondent is obliged to refund the amount erroneously collected.
- ❖ Further observed that, Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act. The amount collected by the Respondent without authority of law is not considered as tax collected by them and therefore, Section 54 of the CGST Act is not applicable.
- ❖ Noted that, Section 17(1) of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Respondent under the mistake of law.
- ❖ Set aside Impugned Deficiency Memo and directed the Respondent to process the refund claim along with simple interest at the rate of 6% per annum at the earliest.

The Hon'ble High Court, Gujarat in M/S Comsol Energy Private Limited v. State of Gujarat [R/Special Civil Application No. 11905 of 2020 decided on December 21, 2020] allowed the refund claim of Integrated Goods and Service Tax ("IGST") paid on ocean freight under the reverse charge mechanism ("RCM") beyond the statutory time limit prescribed under Section 54 of the Central Good and Service Tax Act, 2017 ("the CGST Act"). Held that, the amount collected without authority of law cannot be considered as tax collected and therefore, Section 54 of the CGST Act shall not be applicable. Further, noted that the refund claim was within the time limit prescribed under the Limitation Act, 1963 ("the Limitation Act").