IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2603 of 2022

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TORRENT POWER LTD.

Versus

UNION OF INDIA

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1
NOTICE SERVED for the Respondent(s) No. 1
PRIYANK P LODHA(7852) for the Respondent(s) No. 2

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

Date : 04/08/2022

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

Heard learned advocate Mr. Uchit N. Sheth for the petitioner and learned advocate Mr. Priyank Lodha for the respondents.

2. The petitioner, which is a Public Limited Company and registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "GST Act") is engaged in the business of importing natural gas. When the goods are imported by the petitioner Company inside the country, bill of entry for home consumption is filed by the petitioner.

2.1 It was stated that at the time of clearance of the goods for home consumption, the petitioner company pays customs duty, countervailing duty and other duties payable on the total value of goods

which is the Cost, Insurance and Freight (CIF) value.

3. Section 5(3) of the Integrated Goods and Services Tax (hereinafter referred to as "IGST") empowers the Government to specify the categories of supply of goods or services or both, and the tax on such goods or services shall be paid on reverse charge basis by the recipient of such goods or services. The category of supply of services is mentioned in Entry No.10 of the Reverse Charge Notification.

3.1 By filing the present petition under Article 226 of the Constitution of India, the petitioner prayed to direct the respondent authorities to grant refund of the amount of GST to the tune of Rs.3,06,56,341/- and interest thereon amounting to Rs.14,38,963/-, which was paid by the petitioner in view of Entry No. 10 of the Notification No. 10 of 2017 dated 28.06.2017. It was also prayed to set aside the order dated 13.10.2021 rejecting the refund claim of the petitioner as above.

4. 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.

5. 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].**

5.1 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.

5.2 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."*

5.2.1 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.

6.1 Resultantly, the claim for refund of the petitioner towards IGST is liable to be favourably considered. The competent authority of the respondents shall verify the amount of refund and grant such refund of the amount of IGST paid by the petitioner pursuant to the Entry No.10 of the above notification within eight weeks from the date of receipt of this order along with the statutory rate of interest.

7. The present petition stands allowed in the aforesaid terms.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

BIJOY B. PILLAI