

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 7091/2019

Chambal Fertilisers And Chemicals Limited

----Petitioner

Versus

Union Of India

----Respondent

For Petitioner(s) : Mr. Sanjay Jhanwar

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA**

Order

03/05/2019

The petitioner has challenged the constitutional validity of Section 96(2) of the Rajasthan Goods and Service Tax Act, 2017 (for short, 'the RGST Act') and Section 96 of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act') to the extent they prescribe for constitution of the Authority for Advance Ruling (for short, 'AAR') consisting of members from amongst the officers of Central tax and the officers of State tax, and Rule 103 of the CGST Rules and Rule 103 of the RGST Rules, and prayed for declaring the same as arbitrary and unconstitutional. The petitioner has further prayed to declare the provisions of Section 99 of the CGST Act and Section 99 of the RGST Act to the extent they prescribe for constitution of the Appellate Authority for Advance Ruling (for short, 'the AAAR'), which consists of Chief Commissioner of Central Tax and Commissioner of State Tax, as its members, as arbitrary and unconstitutional.

Contention of the petitioner is that as per Section 97 of the CGST Act, AAR and AAAR have been enforced to determine, apart from other issues, liability to pay tax on any goods or service or both. According to Section 105 of the CGST Act, the AAR/AAAR would have the powers of civil court under the Code of Civil Procedure in relation to specified items and proceedings before them would be deemed to be judicial proceedings. Learned counsel for the petitioner relying on the Constitution Bench judgment of the Supreme Court in **Union of India Vs. R. Gandhi and Others – (2010) 11 SCC 1** submitted that composition of any such Authority/Tribunal ought to have a Member from judicial background as they have been empowered to discharge judicial functions.

It is argued that in case of import of goods on FOB basis, the petitioner avails the Transportation Services of the Transporter, i.e., foreign shipping company for bringing the goods into India and is liable to pay consideration for the Transportation Services, and, therefore can be considered as recipient of services and liable to pay IGST on reverse charge basis. According to proviso to Section 5(1) of the IGST Act the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975. Section 3 of the Custom Tariff Act, 1975 levies the additional duty of goods imported to the territory of India. Section 14(1) of the Customs Act lays down that the value of imported articles shall be the transaction value of such goods, which is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of

the goods are not related and price is the sole consideration for the sale. According to second proviso to Section 14(1) of the Customs Act, the 'transaction value' of the imported article among other charges, as specified, will also include 'cost of transportation to the place of importation'. Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 lays down the provisions to determine the 'transaction value' of the imported goods, which will also include the transportation services. Thus, levy of IGST twice on transportation services, i.e., under the impugned notification, amounts to double taxation.

Challenge in this petition is also made to the notification dated 28.6.2017 to the extent of declaring Entry 10 which notifies 'importer' as the 'recipient' of service for the levy of IGST on reverse charge mechanism and authorizing levy on the Importer in case of import of goods on CIF basis as ultra-vires to Section 5(3) of the IGST Act, 2017. According to Section 5(3) of the Integrated Goods & Service Tax Act, 2017 (for short, 'the IGST Act') the Government is empowered to notify the category for supply of goods or services or both, the tax on which shall be paid on reverse charge basis. The term of 'recipient' has been defined under Section 2(93) of the CGST Act, which states that in cases where a consideration is payable for the supply of goods or services or both, the person who is liable to pay the consideration for supply of goods or services. Section 2(26) of the Customs Act, 1962, provides that in relation to importation of goods, importer includes any owner, beneficial owner or any person holding himself out to be the importer. However, the respondent no.1 Union of India has, vide impugned notification dated 28.06.2017, also

notified 'recipient of service', thereby exceeding the power conferred by Section 5(3) of the IGST Act. In case of transaction on CIF basis, i.e., the exporter/supplier of goods receives the Transportation Services from the foreign shipping company and he is the person liable to pay to the transporter of goods, i.e., foreign shipping company. Hence, as per Section 2(93) of the CGST Act, the said exporter shall be considered as 'recipient of service'. However, the impugned notification has been illegally shifted the liability to pay IGST on the 'importer' who is not the recipient of the services in case of import on CIF basis.

Learned counsel has cited the orders passed by Gujarat High Court in Special Civil Application No.726/2018 (Mohit Minerals Pvt Ltd. Vs. Union of India) dated 9.2.2018 and 12.12.2018.

Issue notice, returnable by 10th July, 2019. Requisite number of copies of petition be served in the offices of Mr. R.D. Rastogi, learned Additional Solicitor General and Mr. M.S. Singhvi, learned Advocate General, and receipts of the same be filed in the Registry. The service on the respondents may thereupon be treated complete. Names of Mr. C.S. Sinha on behalf of learned Additional Solicitor General and that of Mr. Ronak Singhvi on behalf of learned Advocate General be shown in the cause list.

In the meanwhile, no coercive steps be taken against the petitioner.

(NARENDRA SINGH DHADDHA),J

(MOHAMMAD RAFIQ),Acting CJ