Supreme Court dismisses Revenue's Special Leave Petition challenging the Gujarat High Court decision and strikes down levy of IGST on Ocean Freight

Today, the Hon'ble Supreme Court (SC) has dismissed Revenue's Special Leave Petition (SLP) challenging the Gujarat High Court (HC) decision passed in the case of M/s Mohit Minerals Private Limited and other tagged matters, which struck down the levy of Integrated Goods and Service Tax (IGST) on ocean freight on transportation of goods by vessel.

The SC held that the recommendations of the Goods and Service Tax (GST) Council are not binding on the Union and the State Governments given the nature of Indian federal structure and the Parliament intended that the recommendations of the GST Council will only have a persuasive value.

The SC stated that the Parliament and state legislatures possess simultaneous powers to legislate on GST. Further, the recommendations of the GST Council are the product of collaborative dialogue involving the Union and the States. It is not imperative that one of the federal units must always possess a higher share in the power to make decisions.

The Court further opined that the government, while exercising its rule making power under the provision of the Central GST (CGST) Act and the IGST Act, is bound by the recommendations of the GST Council. However, it does not mean that all the recommendations made by the GST council are binding on the legislature's powers to enact primary legislations.

The Apex Court concluded that the impugned levy imposed on the service aspect of transaction is in violation of the principle of composite supply. Since the Indian importer is liable to pay IGST on the composite value of supply, comprising of the value of supply of goods and value of supply of services of the 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 the section 8 of the CGST Act, 2017.

The copy of the SC decision is still awaited.

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