
Supreme Court holds GST on ocean freight unconstitutional. Also holds GST council decisions to be not binding

I. CONTEXT

1. GST was sought to be levied vide notification no. 10/2017-Integrated Tax (Rate) read with notification no. 8/2017-Integrated Tax (Rate) on ocean freight for CIF imports. CIF transactions are such where the freight is borne by the supplier. Such CIF value is also considered for levy of customs duty.
2. Aggrieved by the levy of GST on ocean freight, writ petition was filed before the Gujarat High Court. Gujarat HC had allowed such petition challenging the constitutionality of two GST notifications.
3. Supreme Court has dismissed the appeals filed by the Revenue against such order.

II. Highlights

4. The Supreme Court held that GST on ocean freight paid in case of import of goods is unconstitutional. Primarily, Supreme Court has agreed with the view of the Gujarat HC that the import transaction cannot be split once again to collect IGST which has been already collected at the time of levy of Customs duty.
5. Supreme court has also held that the recommendations of the GST Council are merely recommendary and not binding on either the Union or States. It has also held that Article 246A (which gives the Union and States power to make laws with respect to GST) of the Constitution treat the Union and the States as 'equal units'. The Hon'ble Supreme Court held the Centre and the States were 'autonomous, independent and even competing units' while making GST laws.

III. Our Comments

The Supreme Court has held that imposing tax on ocean freight is unconstitutional agreeing with the view of the Gujarat HC on double taxation. The rulings of Supreme Court on recommendations provided by the GST Council may have far reaching impact, particularly the observation that Article 246A of the Constitution of India does not come with a repugnancy clause. Hence, this may lead to divergences in law and administration between the States and the Union.

Going forward, it would also be interesting to see the views of the Supreme Court in the context of levy of service tax on ocean freight. Revenue appeal against the Gujarat HC decision holding such service tax levy unconstitutional is currently pending.

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