2020:GUJHC:12966-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15208 of 2019

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GUJARAT STATE ELECTRICITY CORPORATION LTD.
Versus
UNION OF INDIA

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Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1
MR NIRZAR S DESAI(2117) for the Respondent(s) No. 1,2

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/03/2020

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this Writ Application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:

> *"(A) This Hon'ble Court may be pleased to issue a writ of certiorari/mandamus or any other appropriate writ, order or direction, against the respondents by quashing the impugned notification no.8/2017-Integrated Tax (rate) dated 28.06.2017 and Entry 10 of the notification no.10/2017-Integrated Tax (Rate) dated 28.06.2017 by declaring that same lack legislative competency, ultra vires to the Integrated Goods and Services Tax Act, 2017 and hence, unconstitutional;*
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> *(B) This Hon'ble Court may be pleased to issue a writ of certiorari/mandamus or any other appropriate writ, order or direction, against the respondents by declaring that no tax is leviabe under the Integrated Goods and Services Tax Act, 2017 on ocean freight for services supplied by a person located in non-taxable territory by way of*

transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and levy and collection of tax on such ocean freight under the impugned notification is not permissible under the law;

(C). This Hon'ble Court may be pleased to issue a writ of mandamus/order/direction to the respondent No.2 to place before this Hon'ble Court the records of the recommendation given and all decisions taken in respect of impugned notification no.8/2017-Integrated Tax (Rate) dated 28.06.2017 and the notification no.10/2017-Integrated Tax (Rate) dated 28.06.2017;

(D) Be pleased to hold and declare that tax including interest collected by the respondents from the petitioner to the tune of Rs.204,350,596.49 Ps., is illegal and unjustified and further be pleased to direct the respondents to refund the same with interest at the rate of 12% per annum;

(E) That pending admission, hearing and final disposal of the petition, this Hon'ble Court may be pleased to:-

(i) stay the operation of the impugned notification no.8/2017-Integrated Tax (Rate) dated 28.06.2017 and entry 10 of the notification no.10/2017-Integrated Tax (Rate) dated 28.06.2017 and/or;

(ii) stay the levy and collection of integrated tax ocean freight on transport of goods in a vessel from a place outside India upto the customs station of clearance in India by a person located in non-taxable territory; and/or;

(iii) restrain the respondent No.1 and all its officers, agents to take any coercive measure against the petitioner and its officers during the pendency of Writ Petition;"

2. The issues raised in this writ-application have now been settled by the judgment of this Court dated 23rd January, 2020, passed in the Special Civil

Application No.726 of 2018 and allied petitions. We quote paragraph Nos.253, 254 and 255 of the judgment, rendered in the batch of the Writ Applications referred to above, as under:

> *"253. In our opinion, such observations, on the contrary, supports the case of the writ-applicants that in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods.*
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> *254. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the Integrated Goods and Services Tax Act, 2017,on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.*
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> *255. In the result, this writ-application along with all other connected writ-applications is allowed. The impugned Notification No.8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of."*

3. In view of the above, no further adjudication is required in this matter. The petition stands disposed of accordingly.

4. With regard to the other ancillary reliefs prayed for, it shall be open for the writ-applicant to approach the concerned department and seek appropriate orders.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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