

**IN THE HIGH COURT OF GUJARAT AT
AHMEDABAD**

SPECIAL CIVIL APPLICATION No. 726 of 2018

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MOHIT MINERALS PVT LTD....Petitioner(s)
Versus
UNION OF INDIA & 1....Respondent(s)

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Appearance :

Mr JK MITTAL for Mr HARDIK P MODH, Advocates for the Petitioner

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CORAM: HONOURABLE Mr. JUSTICE AKIL
KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
9th February 2018

ORAL ORDER (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

The petitioner has challenged *vires* of Notification No. 8/2017-Integrated Tax [Rate] dated 28th June 2017 and Entry 10 of the Notification No. 10/2017-Integrated Tax [Rate] also dated 28th June 2017. The petitioner is an importer of non-cooking coal and on such imports, the petitioner pays Custom duty, the value of which includes Ocean Freight. On the same valuation, the petitioner also pays tax under the Integrated Goods & Service Tax Act, 2017 [**“IGST Act”** for short]. The

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petitioner's grievance is that under the impugned Notifications, the petitioner is asked to pay tax at the prescribed rate all over again on the ocean freight. The petitioner's challenge has principally three elements viz., [a] having paid the tax under IGST Act on the entire value of imports; inclusive of the ocean freight, the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification; [b] in case of CIF contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism, and [c] in case of High Sea sales, the burden is cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/ transporter.

Counsel for the petitioner submitted that the *impugned* Notifications are *ultra vires* the Act and are in any case in exercise of excessive delegation of

powers of subordinate legislation.

Notice and notice as to *interim* relief, returnable on
9th March 2018.

Direct service is permitted.

[AKIL KURESHI, J.]

[B.N. KARIA, J.]

Prakash

