

Jumbo Trumpets...

Operation Failure *but* Patient Survived

Taxing Ocean freight had always been an enigma. Importers always felt it is a dual levy and a greed levy and had contested the same on all fours, namely, equity, reason, logic and law. When this levy was contested under the GST, in the celebrated case of Mohit Minerals, the Hon'ble Supreme Court, while upholding the vires and powers of the legislature, went on to strike the levy down on a completely new front. In a recent and shining decision, the Hon'ble High Court of Madras had an occasion to test the oceans and has delivered a landmark decision on the levy of Ocean Freight during the Service tax regime.

The Writ Petition was filed by two categories of petitioners, namely, Steamer Agents and the Importers, for their respective period of demands against them. There were a series of challenges starting from Section 66C(2), Place of Provision Rules, Notifications as well as Circular issued in this regard. In a very detailed judgement, the Hon'ble High Court, while upholding the vires of the Sections and dismissing the challenges against various Notifications and Circulars has finally upheld that neither of the categories (Steamer Agents / Importers) are liable for Service Tax on the Ocean Freight on a very interesting yet precise interpretation of the term “recipient of the service”.



Studded with a rosary of cogent reasoning and narrating the meaning of Cost, Insurance, Freight (CIF) transactions, the Hon'ble High Court has held that, in the case of the Ocean Freight, neither the steamer agents nor the importers are the recipient of service but it is the Overseas shipping liner. Further it has also been held that there is no privity of contract between the steamer agents / importers and the service provider.

Exposing the patent flaw in the Notification 3/2017-ST dt 12.01.2017 & 15/2017 – ST dt 13.04.2017, the Hon'ble High Court has held that neither the steamer agents nor the importers are liable to pay Service tax on the Ocean Freight.

The High Court has also forbade the Revenue from issuing any further show cause notices in this regard and has also allowed the petitioners to file a refund claim within 30 days from the date of receipt of this decision.

With the clouds cleared, we urge all victims of this levy, who had already paid the tax, to take the benefit of this wonderful decision and apply for refund, of course subject to the unjust enrichment.

**In Re: The Chennai and Ennore Ports Steamer Agents Association &
Anr vs UOI & Ors - W.P.No.2147 of 2017 batch dated 28.03.2023
- High Court of Madras**

