

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

**WPA 10415 of 2025
Sunrise Timpily Company Pvt. Ltd.
vs.
Union of India & Ors.**

For the Petitioner	: Mr. Avra Mazumder, Adv. Ms. Alisha Das, Adv. Mr. Suman Bhowmik, Adv. Ms. Elina Dey, Adv. Ms. Rupomita Ghosh, Adv.
For the State	: Mr. S.K. Dutt, Adv. Mr. Saptak Sanyal, Adv. Mr. Debraj Sahu, Adv.
For the CGST Authority	: Mr. Shiv Shankar Banerjee, Adv. Mr. Bijiresh Mukherjee, Adv.
Hearing Concluded on	: 19.01.2026
Judgment on	: 19.01.2026

Om Narayan Rai, J.:-

1. This writ petition assails an order in original dated January 30, 2025 passed under Section 74 of the Central Goods and Services Act, 2017/ West Bengal Goods and Service Tax Act, 2017 (hereafter the said Act of 2017) as well as an order dated March 25, 2025 passed by the Proper Officer thereby rejecting the petitioner's application for rectification.

FACTS OF THE CASE:

2. A proceeding under Section 74 of the said Act of 2017 had been initiated against the petitioner by issuing a notice to show cause dated September 8, 2021 alleging that the petitioner had failed to make payment of Integrated Goods and Services Tax (hereafter “IGST”) on ocean freight (under reverse charge mechanism) for goods imported by it. The petitioner replied to the said notice to show cause on October 23, 2021.
3. Later on, another notice dated July 13, 2022 was issued to the petitioner which too was replied by the petitioner on August 8, 2022.
4. In all the replies which the petitioner furnished, the petitioner took a consistent stand that in terms of the judgment of the Hon’ble High Court of Gujarat in the case of ***Mohit Minerals (P.) Ltd. vs. Union of India & Ors.***¹, the petitioner was not liable to pay IGST on ocean freight for imported goods.
5. The petitioner was thereafter granted an opportunity of personal hearing by the Proper Officer on September 26, 2024. After the hearing, the petitioner filed a written submission on October 07, 2024 reiterating that the petitioner could not be held liable to pay IGST on ocean freight for goods imported by it while referring to the judgment of the Hon’ble Supreme Court in the case of ***Union of India vs. Mohit Minerals (P.) Ltd.***²
6. Ultimately on January 30, 2025, the Proper Officer passed the impugned order in original thereby holding the petitioner liable to pay Rs.18,61,047/- on account of IGST on ocean freight for its imports.

¹ 2020 (1) TMI 974 – Gujrat High Court; 2020 SCC OnLine Guj 49

² [2022]138 taxmann.com 331 (SC); (2022) 10 SCC 700

7. The petitioner thereafter filed an application for rectification of the said order in original thereby once again reiterating its stand that in terms of the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals (P.) Ltd.*** (supra) as well as other subsequent judgments of various High Courts, the petitioner could not be held liable to pay IGST on import ocean freight.
8. The said application for rectification also got rejected by an order dated March 25, 2025. Being aggrieved thereby, the petitioner has approached this Court by way of the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

9. Mr. Mazumder, learned advocate appearing for the petitioner submits that the order impugned is wholly without jurisdiction inasmuch as the Proper Officer has imposed a tax liability on the petitioner in the teeth of the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals (P.) Ltd.*** (supra). It is submitted that once the Hon'ble Supreme Court has categorically held that IGST was not leviable on ocean freight for import of goods, the Proper Officer had no jurisdiction to impose such levy on the petitioner.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

10. Mr. Banerjee, learned advocate appearing for the respondent CGST Authorities submits that the order in original has been passed upon correct interpretation of the judgment of the Hon'ble Supreme Court. It is submitted that law as laid down by the Hon'ble Supreme Court in the said judgment of ***Mohit Minerals (P.) Ltd.*** (supra), was incorporated in the Notification No.10/2017 issued by the Government of India, Ministry of Finance (Department of Revenue) by amending the said notification and

deleting Entry 10 thereof with effect from October 1, 2023 and that being so, the petitioner's case cannot justifiably escape levy. It is submitted, by placing reliance on the order in original, that the transactions on which tax has been imposed were conducted by the petitioner during July 2017 to March 2018 i.e. a period prior to October 1, 2023 when the said Notification No.10/2017 was amended and as such, tax liability has rightly been imposed upon the petitioner.

11. It is further submitted by Mr. Banerjee that since the amendment of the Notification has been done with effect from October 1, 2023, the same cannot be treated to be retrospective and therefore the order in original deserves to be sustained.

PETITIONER'S REJOINDER:

12. Mr. Mazumder, learned advocate appearing for the petitioner rejoins by inviting the attention of this Court to a judgment of the Hon'ble Division Bench of this Court in the case of ***Union of India & Anr. vs. MCPI Private Limited & Anr.***³ whereby the Hon'ble Division Bench upon relying on the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals*** (supra) dismissed the appeal filed by the revenue against the order passed by the Hon'ble Single Judge holding that no tax was (is) leviable under the Integrated Goods and Services Tax Act, 2007, on ocean freight for services provided by a person located in a non-taxable territory, by way of transportation of goods on a vessel from a place outside India up to Customs station of clearance in India. It is submitted by Mr. Mazumder that in the said case before the Hon'ble Division Bench the order impugned had

³ 2022(6) TMI 768

been passed by the Hon'ble Single Judge in the year 2020 i.e. prior to the amendment being effected to the said Notification No.10/2017. It is then submitted that in such view of the matter, Revenue's case that the petitioner should be saddled with IGST since its transactions pertain to a period prior to the amendment of the said Notification No.10/2017 lacks merit.

13. Mr. Mazumder also invites the attention of this Court to the minutes of the GST counsel and the requests made by the said counsel in its 15th meeting held on July 11, 2023 to assert that GSDT Council had proposed amendment of the Notification No.10/2017 to remove redundant provisions in the said notification pursuant to the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals (P.) Ltd.*** (supra).

ANALYSIS & DECISION:

14. Heard learned counsels appearing for the respective parties and considered the material on record.
15. The notice to show cause issued to the petitioner, reveals that initially an issue as regards non-payment of IGST under the reverse charge mechanism on ocean freight on imports was raised *vide* audit observation no.4 for the period July 2017 to March 2018 and the petitioner's response to the same was called for. The petitioner responded to the audit observation on January 2, 2021 thereby referring to the judgment of the Hon'ble High Court of Gujarat in the case of ***Mohit Minerals (P.) Ltd*** (supra), however, the revenue proceeded to issue the notice to show cause while observing that the judgment of the Hon'ble Gujarat High Court had been assailed before the Hon'ble Supreme Court in the following words:-

“But the Hon’ble Supreme Court has admitted the plea of the Central Government to challenge Gujarat High Court’s decision quashing Integrated Goods and Service Tax (IGST) on ocean freights under reverse charge mechanism”.

16. While the adjudications proceedings were under way the Hon’ble Supreme Court rendered the judgment in the case of **Mohit Minerals (P.) Ltd** (supra) thereby holding as follows:-

“Based on the above discussion, we have reached the following conclusion:

(i) The recommendations of the GST Council are not binding on the Union and States for the following reasons:

(a) The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;

(b) Neither does Article 279A begin with a non-obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The ‘recommendations’ of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation; and

(c) The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A (4) are binding on the legislature’s power to enact primary legislations;

(ii) On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an

“inter-state” supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service;

(iii) The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

(iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation;

(v) The impugned levy imposed on the ‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of 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 Section 8 of the CGST Act.”

17. The aforesaid aspect was brought to the notice of the Proper Officer by the petitioner by way of a written submission filed by the petitioner after the hearing. The Proper Officer took note of the petitioner’s submission and differed with the petitioner while observing that the Hon’ble Supreme Court *“did not highlight the retrospective or prospective effect of judgment on the instant issue”*.

18. Relying on the amendment made to the Notification No.10/2017 whereby the Entry 10 had been deleted/omitted with effect from October 1, 2023, the Proper Officer held against the petitioner while observing as follows:-

“5.22. Instant case is related to the period of July, 2017 to March, 2018 and CBIC has freed to importer to pay IGST on ocean freight service on comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF (Cost Insurance Freight) contract with effect from 01-10-2023 only.”

19. The Proper Officer was, thus, of the view that since the amendment in the notification took effect from October 1, 2023 therefore transactions pertaining to any period prior to the amendment of the said notification would attract GST on ocean freight for imports notwithstanding the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals (P.) Ltd*** (supra).
20. Such view of the Proper Officer is fundamentally wrong. It is well-settled that a judgment of a Constitutional Court declaring a law applies retrospectively unless it is expressly made prospective, whereas a statute applies prospectively unless it is expressly made retrospective. (See: ***Kanishk Sinha v. State of W.B.***⁴).
21. In such view of the matter, the Proper Officer was not right in concluding that since the judgment of the Hon'ble Supreme Court in the case of ***Mohit Minerals (P.) Ltd.*** (supra) did not indicate as to whether the same would apply prospectively or retrospectively, the same should be given prospective effect.
22. Furthermore, reliance of the Proper Officer on the amendment to the Notification No.10/2017 to impose levy on the petitioner was/is also without basis. The said Notification No.10/2017 cannot be seen as enacting a law overriding the statutory provisions. In fact such notifications have to conform to the provisions of the statute (in this case the Integrated Goods and Services Tax Act, 2017) and have to operate within the statutory framework. The same cannot trump statutory provisions.

⁴ 2025 SCC OnLine SC 443

- 23.** The Hon'ble Supreme Court has clearly held in the case of ***Mohit Minerals (P.) Ltd.*** (supra) that the *Notification 10/2017* is *only clarificatory* and that the same “*did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge*”.
- 24.** For all the reasons aforesaid the order in original cannot be sustained. Accordingly, the order in original dated January 30, 2025 stands set aside.
- 25.** Since the petitioner's application for rectification was rejected by the order dated March 25, 2025 thereby confirming the impugned order in original, the same also cannot be sustained. The same also stands set aside.
- 26.** WPA 10415 of 2025 stands disposed of. No. costs.
- 27.** Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)