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GSTAT Allows IGST Refund on Ocean Freight to Non-Litigants as Mohit Minerals Operates Retrospectively

The Goods and Services Tax Appellate Tribunal, Surat Bench (**"GSTAT"**) in ***Assistant Commissioner, CGST & Central Excise v. Filatex India Limited [Appeal Nos. APL/11/SRT/2026 to APL/56/SRT/2026, Final Order No. GUJ/SRT/002 to 047/2026 dated September 30, 2026]*** dismissed 46 appeals filed by the Revenue under Section 112(3) of the CGST Act, 2017 and upheld the refund of IGST paid under reverse charge mechanism (**"RCM"**) on ocean freight, on the ground that the declaration of the levy as unconstitutional in ***Union of India v. Mohit Minerals Private Limited*** **[Civil Appeal No. 1390 of 2022 dated May 19, 2022]** operates retrospectively and that a taxpayer who was not a party to that litigation can also claim refund, without any separate order in its own name.

Facts:

- Filatex India Limited (**"the Respondent"**), a registered manufacturer, imported goods and paid IGST under RCM on ocean freight in terms of Entry 10 of Notification No. 10/2017-Integrated Tax (Rate) read with Entry 9(ii) of Notification No. 8/2017-Integrated Tax (Rate), issued under Section 5(3) of the IGST Act, 2017.

- The Hon'ble Gujarat High Court in ***Mohit Minerals Pvt. Ltd. v. Union of India [SCA No. 726 of 2018 dated January 23, 2020]*** declared both the notifications ultra vires the IGST Act, 2017 and unconstitutional. The appeals of the Union of India were dismissed by the Hon'ble Supreme Court on May 19, 2022.

- In April 2023, the Respondent filed 46 refund claims for IGST paid on ocean freight. Show cause notices proposed rejection on two grounds: (i) the Supreme Court judgment does not mention retrospective effect and is therefore effective from May 19, 2022 only; and

(ii) the Respondent had availed and utilised the IGST credit, so a simultaneous refund claim would amount to unjust enrichment.

- The Respondent replied that a provision declared ultra vires is deemed non-existent from inception, and that the credit was not utilised in substance since sufficient balance existed under CGST and SGST, the ITC balance having to be seen as a whole and IGST being exhausted first as per the prescribed method.

- The adjudicating authority rejected all the claims, holding that the judgment is not retrospective and that the balance of ITC could not be considered as a whole, the IGST balance having to remain in the electronic credit ledger for a refund. The judgments relied upon by the Respondent were brushed aside without discussion.

- The Additional Commissioner (Appeals), Vadodara vide common Order-in-Appeal No. VAD-CGST-002-APP-ADC-349-394-2023-24 dated March 28, 2024 set aside the orders. Relying on *P.V. George v. State of Kerala* and *M.A. Murthy v. State of Karnataka*, it held that a levy declared ultra vires is deemed never to have existed. Examining Sections 49A and 49B, Rule 88A and Circular No. 98/17/2019-GST dated April 23, 2019, it held that the Respondent was bound to exhaust IGST credit first and, applying the maxim *lex non cogit ad impossibilia*, rejected the utilisation objection.

- Pursuant to the Commissioner's order dated December 5, 2024 under Section 112(3), the Revenue filed 46 appeals before the GSTAT.

Contentions:

Revenue:

- Rule 89(2) requires a copy of the order holding that refund is due; the Respondent, not being a party to *Mohit Minerals*, cannot treat that judgment as such an order.

- The Supreme Court judgment does not mention any retrospective effect and operates from May 19, 2022 onwards; benefits and notifications cannot be given retrospective effect unless specified, relying on *Union of India v. C. Krishna Reddy*, *Commissioner v. Adani Exports Ltd.* and *CCE, Chennai v. Indian Organic Ltd.*

- Drawing a parallel with *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536], where the Central Duties of Excise (Retrospective Exemption) Act, 1986 enabled refunds, it was argued that no such notification has been issued for refund of GST paid on ocean freight. Reliance was also placed on *M. Nagaraj v. Union of India* [(2006) 8 SCC 212] for prospective application of judgments.

- Orally, the Authorised Representative argued that once IGST credit is utilised it cannot be refunded even if CGST and SGST credit remains, IGST being a separate pool, and that refund would amount to unjust enrichment. Reliance was placed on *SN Tradelink Pvt. Ltd. v. State of Gujarat* [(2025) 36 Centax 100 (Guj.)], where refund was allowed only after reversal of credit through Form GST DRC-03, which had not been done here.

Respondent:

- The Revenue pointed to no perversity, illegality or jurisdictional error in the Order-in-Appeal and merely sought to re-agitate issues; the utilisation and reversal issue was never raised in the appeal.

- A provision declared ultra vires is non-existent from inception and judgments declaring the law apply retrospectively unless expressly made prospective, relying on *Kanishk Sinha v. State of West Bengal* [2025 SCC OnLine SC 443], *M.A. Murthy v. State of Karnataka* [(2003) 7 SCC 517], *Louis Dreyfus Company Pvt. Ltd. v. Union of India* (Andhra Pradesh High Court, 2025) and *Sunrise Timply Company Pvt. Ltd. v. Union of India* (Calcutta High Court, 2026).

- A declaration by a constitutional court binds all authorities and the benefit is available to every person, whether or not a party; the judgment itself is the "order" under Rule 89(2); no further notification is needed for consequential refunds; and *Krishna Reddy*, *Adani Exports* and *Indian Organic* deal with retrospectivity of executive exemption notifications, while *M. Nagaraj* deals with a constitutional amendment.

Issues:

1. Whether the Authorised Representative of the Revenue can raise, before the GSTAT, the ground of utilisation of IGST credit when that ground was not specified by the Commissioner in his order under Section 112(3) of the CGST Act, 2017?

2. Whether refund of IGST paid on ocean freight can be denied, or amounts to unjust enrichment, merely because the IGST credit was availed and utilised, when sufficient unutilised balance of CGST and SGST remained in the electronic credit ledger?

3. Whether the judgment in *Mohit Minerals*, which is silent on its temporal operation, applies only prospectively from May 19, 2022?

4. Whether a taxpayer who was not a party to *Mohit Minerals* can claim refund on the basis of that judgment, and whether the judgment constitutes the "order" contemplated under Rule 89(2) of the CGST Rules, 2017?

Held:

The GSTAT, Surat Bench in ***Appeal Nos. APL/11/SRT/2026 to APL/56/SRT/2026, Final Order No. GUJ/SRT/002 to 047/2026*** held as under:

- Observed that the ground of utilisation of IGST credit is neither present in the appeal nor specified in the Commissioner's order dated December 5, 2024 under Section 112(3). It was not that the issue escaped the Commissioner's mind, as it was one of the grounds in

the show cause notices, was replied to, was rejected by the adjudicating authority and was decided in favour of the Respondent by the Appellate Authority, yet the Commissioner did not find that part of the order to be "not correct, legal or proper".

- Held that an officer filing an appeal under Section 112(3) cannot travel beyond the authorisation granted by the Commissioner, and that a ground which has been considered and dropped by the Commissioner cannot be raised by the Authorised Representative.

- Noted that, in any case, *SN Tradelink* does not support the Revenue. In that case the IGST credit had been utilised and the refund was allowed after reversal through Form GST DRC-03 by utilising the SGST balance. The judgment does not hold that refund is barred if IGST has been utilised.

- Held that holding a combined unutilised balance of CGST and SGST equivalent to the refund amount, and debiting the refund amount against it in the credit ledger, amounts to non-utilisation of the credit in substance. Accordingly, no double benefit or unjust enrichment arises.

- Observed that the Revenue is under an erroneous belief that judgments, like laws, operate prospectively. Unless otherwise specified, all laws are prospective and all judgments are retrospective, because courts interpret and declare the law and do not legislate. The levy did not become unconstitutional because of the judgments; it was always so. Prospective overruling, first applied in *Golak Nath v. State of Punjab* [1967 INSC 45], is an exception available only where the Court itself so declares, and no such declaration exists in *Mohit Minerals*. Reliance was placed on *Kanishk Sinha* [2025 INSC 278] and *Louis Dreyfus* [W.P. No. 17220 of 2024 dated August 14, 2025].

- Noted that *M. Nagaraj* does not help the Revenue, as it concerned constitutional amendments on reservation in promotions and the extract from *Indra Sawhney* only

reinforces that where the Supreme Court wants its judgment to be prospective, it directs so. Hence, refund cannot be rejected on the ground that *Mohit Minerals* does not state that it has retrospective effect.

- Held that under Articles 265 and 300A of the Constitution, tax collected under a levy declared ultra vires and unconstitutional is without authority of law from inception, whether or not the taxpayer was a party to the writ petition. The nine-Judge Bench in *Mafatlal* excludes the category of "unconstitutional levy" from the proposition that "each one must fight his own battle"; the only exception is a person who himself unsuccessfully challenged the very provision and allowed that decision to attain finality. The Respondent never challenged the levy and lost.

- Held that the declaration that the levy is void *ab initio* is itself the legal foundation for refund and is the "order" contemplated under Rule 89(2). No further order in the name of the claimant is required, as the entitlement flows directly from Article 265 and does not depend on adjudication *inter partes*.

- Noted that the High Courts have allowed refund of IGST paid on ocean freight in identical facts, in *Comsol Energy* and *Shree Mahesh Oil Products*, and that limitation was not a ground of appeal before the GSTAT.

- Directed that the order of the Appellate Authority is upheld and the appeals filed by the Revenue are dismissed. The department shall process the refund claims and pay the refund amounts and interest to the Respondent, to the extent not already paid, with interest under Section 56 payable for the period of delay beyond 60 days from the date of the original application. For instance, for applications filed on April 22, 2023, interest would run from June 22, 2023 till the date of actual payment.

Our Comments:

Provisions invoked

Section 5(3) of the IGST Act, 2017 empowers the Government, on the recommendation of the Council, to notify categories of supply on which tax is payable by the recipient under RCM. Entry 10 of Notification No. 10/2017-Integrated Tax (Rate) made the Indian importer liable for services of transportation of goods by vessel from outside India up to the customs station of clearance in India, with the rate prescribed by Entry 9(ii) of Notification No. 8/2017-Integrated Tax (Rate). The Gujarat High Court struck down both entries, inter alia on the footing of double taxation where ocean freight already forms part of the value of goods imported on CIF basis, and the Supreme Court upheld the decision.

Section 54 of the CGST Act, 2017 read with Rule 89(2) governs refund. Section 54(1) prescribes a two-year time limit and Section 54(8)(e) requires the amount to be credited to the Consumer Welfare Fund where the incidence of tax has been passed on, which is the statutory form of the unjust enrichment bar. Rule 89(2) requires a copy of the order resulting in the refund. The Tribunal has now clarified that, for an unconstitutional levy, the judgment declaring the levy void is itself such an order.

Sections 49A and 49B and Rule 88A prescribe that IGST credit is first utilised towards IGST liability, then CGST and then SGST. Since the utilisation of IGST credit first is mandatory and automatic, the Tribunal rightly looked at substance, namely the combined unutilised CGST and SGST balance, rather than treating each head of credit as a watertight silo.

Section 112(3) of the CGST Act, 2017 empowers the Commissioner to call for and examine the record of an order of the Appellate Authority or Revisional Authority and to direct a subordinate officer to apply to the Tribunal for determination of such points as may be specified in his order. The Tribunal has confined the officer's authority strictly to those specified points. The Section 112(3) order of the Commissioner should therefore be obtained and examined in every Revenue appeal, as it limits the scope of the Revenue's case.

Section 56 of the CGST Act, 2017 provides for interest where refund is not granted within 60 days from the date of receipt of the application. The Tribunal has directed interest from the 61st day of the original application. As Section 56 prescribes different rates depending on whether the refund arises from an order that has attained finality, the rate applicable should be verified while computing the claim.

Pari materia judgments

- *Union of India v. Mohit Minerals Private Limited* [Civil Appeal No. 1390 of 2022 dated May 19, 2022] (Supreme Court) – affirmed the Gujarat High Court's decision declaring the RCM levy on ocean freight ultra vires and unconstitutional.

- *Bharat Oman Refineries Ltd. v. Union of India* [SCA No. 8881 of 2020 dated August 18, 2020] and *Comsol Energy Pvt. Ltd. v. State of Gujarat* [R/SCA No. 11905 of 2020 dated December 21, 2020] (Gujarat High Court) – refund of IGST paid on ocean freight directed; in *Comsol Energy* the deficiency memos were quashed and refund of Rs. 93.54 lakh was directed with simple interest at 6% per annum, and the Limitation Act, not Section 54, was held to govern an unconstitutional levy.

- *Shree Mahesh Oil Products v. Union of India* [W.P. No. 14177 of 2019 dated July 13, 2021] (Rajasthan High Court) – petition disposed of in terms of *Mohit Minerals* and *Comsol Energy* even though the Gujarat High Court judgment was then under challenge and not stayed.

- *Louis Dreyfus Company Private Limited v. Union of India* [W.P. No. 17220 of 2024 dated August 14, 2025] (Andhra Pradesh High Court) – the plea that *Mohit Minerals* operates prospectively was negated; a judgment declaring the law operates retrospectively unless the Supreme Court itself declares otherwise.

- *Kanishk Sinha v. State of West Bengal* [2025 INSC 278] (Supreme Court) – the judgment of a constitutional court is always retrospective unless the judgment itself states that it operates prospectively.

Contrary and distinguishable judgments

- *SN Tradelink Pvt. Ltd. v. State of Gujarat* [(2025) 36 Centax 100 (Guj.)] – relied on by the Revenue. Refund was allowed there after the petitioner reversed the credit through Form GST DRC-03 using the SGST balance. The Tribunal distinguished it, observing that it does not lay down that refund is barred once IGST is utilised.

- *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536] – the principle that "each one must fight his own battle" and the exception for a person who has himself lost a challenge to the levy, which has attained finality, continue to apply. The Tribunal held that this exception does not reach a taxpayer who never litigated the levy.

- *Union of India v. C. Krishna Reddy*, *Commissioner v. Adani Exports Ltd.* and *CCE, Chennai v. Indian Organic Ltd.* – these deal with retrospective application of exemption notifications and circulars issued by the executive, and were held to have no application to the retrospective effect of a judicial declaration.

- *M. Nagaraj v. Union of India* [(2006) 8 SCC 212] and *Golak Nath v. State of Punjab* [1967 INSC 45] – the doctrine of prospective overruling applies only where the Court itself directs, and does not displace the default rule that judgments operate retrospectively.

Practical takeaways

This is a Tribunal ruling in a batch of 46 appeals and, being an order of a Bench of the Appellate Tribunal, it is appealable to the High Court under Section 117 of the CGST Act, 2017 on a substantial question of law. Until then it is a strong persuasive precedent for importers who

paid IGST on ocean freight under RCM and for other taxpayers who paid tax under a levy that has been judicially declared void. Taxpayers should keep the following in view:

- Confirm that the taxpayer never itself challenged the levy and lost, as that is the only exception recognised in *Mafatlal*.
- Work out month-wise the combined unutilised CGST and SGST balance against the IGST refund claimed. Where the balance was not sufficient, the reversal route through Form GST DRC-03 followed in *SN Tradelink* may need to be considered.
- The Tribunal did not decide limitation, as it was not a ground of appeal. Taxpayers who have not yet filed claims should examine the limitation position carefully, keeping in view the Limitation Act, 1963 as applied in *Comsol Energy* and the date from which the mistake can be said to have been discovered.
- Where a refund is sanctioned late, claim interest under Section 56 from the 61st day of the original application, as directed by the Tribunal.

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