

# Supreme Court rules against levy of Integrated Goods and Services Tax on ocean freight in case of CIF imports

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## Background

On 28 June 2017, the tax department issued two notifications (Notification No. 8/2017- Integrated Tax (Rate) (Notification No. 08/2017) and Notification No. 10/2017- Integrated Tax (Rate) (Notification No. 10/2017)) that deemed an importer of goods to be the 'recipient' of freight services provided by foreign shipper in respect of Cost Insurance Freight (CIF) imports. Consequently, the importers became liable to pay Integrated Goods and Service Tax (IGST) on the ocean freight services on reverse charge basis. Due to this, the cost of import for the importers increased by half a percent of the CIF value of the import. Consequently, the importers became liable to pay Integrated Goods and Service Tax (IGST) on the ocean freight services on reverse charge basis. Due to this, the cost of import for the importers increased by half a percent of the CIF value of the import.

The Supreme Court, in a much-awaited judgement, has held that Integrated Goods and Service Tax is not separately leviable on importers in respect of ocean freight services under Cost Insurance Freight contracts.

The Notifications were challenged before the Gujarat High Court which held them to be unconstitutional. The High Court held that the importers under CIF contracts were not the recipients of ocean freight services which were rendered by the foreign shipper to the foreign exporter. The scope of the word 'recipient' cannot be extended to mean something that has not been statutorily provided in the statute. The Court further held that the attempt to tax ocean freight separately despite having levied and collected the integrated tax on import of goods (the value of which included value of the ocean freight) was against the concept of composite supply under the Goods and Service Tax (GST) laws and thus, impermissible.

The tax department approached the Supreme Court against the decision of the Gujarat High Court in a batch of petitions.

## Supreme Court's Decision

The Supreme Court concluded that the supply of service of transportation by the foreign shipper forms a part of the bundle of supplies, i.e., composite supplies by the foreign exporter to the Indian importer. The Court held that the levy of IGST separately on the services provided by the foreign shipper would be violative of the principle of composite supplies under Section 8 of the Central Goods and Services Tax Act (CGST Act) and antithetical to the very scheme of the CGST Act. However, contrary to the ruling by Gujarat High Court, the Supreme Court held that the importers were the 'recipients' in CIF contracts. It held that the mention of importers as recipients under Notification No. 10/2017 was only clarificatory in nature and that the Government by notification had not specified a taxable

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person different from recipient for the purposes of reverse charge. On the issue of the nature of supply, the Supreme Court held that such an import constitutes an 'inter-state' supply and would thus be exigible to IGST.

Importantly, on the nature of the recommendations of the GST Council, the Court held that the amendments brought about in the 101<sup>st</sup> Constitutional Amendment Act, 2016 (**Amendment Act**) indicate that the Parliament intended the recommendation of the GST Council to only have a persuasive value. The Court further held that if the recommendations of the GST Council are regarded as binding in nature, it would be disruptive to the fiscal federalism enshrined in the Amendment Act where both the Union and the States are conferred equal power to legislate on GST.

## Way Forward

The judgement of the Supreme Court settles the issue of leviability of IGST under reverse charge on ocean freight in case of imports made on CIF basis. The importers will not have to pay IGST separately on ocean freight services.

The decision is also a welcome relief for those importers who were ineligible to claim the Input Tax Credit (ITC) of IGST paid on ocean freight services under reverse charge previously. Sectors specifically falling in this category include power, oil and gas and alcohol.

Apart from the above, importers who were unable to utilise the ITC will also benefit from the ruling of the Supreme Court. Such importers may claim refund of the IGST paid on ocean freight under reverse charge.

This judgement should also bring closure to litigation on the issue of IGST on ocean freight pending before various fora. Cases where demands against importers were pending due to non-payment of IGST on ocean freight should also end now.

*Trilegal represented one of the importers in this matter before the Supreme Court.*

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