

## **GST COMPENSATION CESS CASE –THE WAY FORWARD**

Written by *Divyashree K S*

*LLM Student, Christ University, Hosur Main Road, Bengaluru*

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**1ST GST CASE: UNION OF INDIA & ANR. v. MOHIT MINERAL PVT. LTD. (AIR 2018 SCC 5318 CIVIL APPEAL NO. 10177 Of 2018 (arising out of SLP(C) No.25415 of 2017)**

### **INTRODUCTION**

The objective of new tax regime (GST) was to remove cascading effect, minimize tax impact on inflation, and reduce tax slabs and to unify all laws related to taxation in the country. In the present case we can see that the Supreme Court has over looked the significant goals of the act in bringing

### **BACKGROUND**

The Center had moved against the Delhi High Court controlling in the Supreme Court with a Special leave Petition (SLP) testing the high court request of 25 August 2017. The high court held that the Compensation to States Act, 2017 was past the lawful capability of Parliament. Judgment was passed by SC on 8th Oct 2018. Decided by divisional bench J.A K Sikri and J. Ashok Bhushan.

### **FACTS**

Mohit Mineral Pvt. Ltd is a Company incorporated under the Companies Act which is a trader of imported and Indian coal. They imported coal from Indonesia, South Africa and also purchases coal from Indian mines and have paid clean energy cess till 30/06/2017 of Rs 7.68 crs. The Goods and Services Tax (Compensation to States) Act, 2017 and on 04/05/2017 The taxation Laws (Amendment) Act, 2017 was enacted, where under, several cesses including

Clean Energy Cess was repealed. The writ petitioner submitted a representation to the GST Council seeking set off of Clean Energy Cess against GST Compensation Cess.

The Clean Energy Cess, presented in 2010, is a carbon charge on the generation and importation of coal, lignite and peat, working on the "polluter pays" standard. The cess was first levied at the rate of Rs.50 for every ton of coal produced or imported. By 2016, this amount was scaled up to Rs 400. Clean Energy Cess is a sort of carbon expense and is exacted in India as an obligation of Excise under segment 83 (3) of the Finance Act, 2010 on Coal. Finance Act, 2016 the Clean Energy Cess was renamed as Clean Environment Cess. Taxation Laws Amendment Act, 2017 abolished clean energy cess on 1/7/2017.

## ISSUES

- Whether the Compensation to States Act, 2017 is beyond the legislative competence of the Parliament
- Whether the Act violates Constitution (One Hundred and First Amendment) Act, 2016 as it amounts to colorable legislation
- Regardless of whether duty of Compensation to States Cess and GST on the equivalent burdening occasion is reasonable in law i.e. whether it amounts to double taxation
- Whether payments made towards Clean Energy Cess can be set off against payment of Compensations to States Cess.

## JUDGMENT

Article 246A was challenged which stated that Parliament or legislature of every state has power to make laws w.r.t GST. The defendant contented that Compensation Act is not a Taxing Statute but the Court held that Article 248 gives residuary power to parliament to make laws regarding GST. The 101 amendment act 2017 objective was to subsume various central and state tax by one tax GST. Imposition of compensation to states cess fall out of the objective of the Act Also Article 246 empowers parliament to make laws with respect to Goods and Services Tax.

Cess is not a tax but a fee was the argument of Mohit Minerals Company. Court held Cess is a tax and is an increment on tax. According to Section 18 of 101 amendment act 2016 holds power of parliament to make law providing for compensation to states for loss of revenue was expressly included by constitutional provision therefore the company lost in second issue.

Also it was clear that there is no double taxation in this regard as there is no overlapping and the taxes are separate and distinct. The principle is well settled that two taxes which are separate and distinct and on two different aspects of transaction are permissible

The purpose of tax collected were different: The Clean Energy Cess was levied and collected for the purpose of promoting clean energy initiatives, funding research and other purposes relating thereto. Compensation Cess is collected to provide compensation to the states for the loss of revenues arising out of implementation of GST. The distribution of collected tax were different: The Clean Energy Cess was to be used for the purpose of union and not to be distributed to states. Whereas Compensation Cess has to be wholly distributed amongst states on this ground the court held that there cannot be set off of clean energy cess with the compensation cess.

## **CASE INSIGHT**

It is clear from the case that there is no clear definition of what constitutes cess and its application will be on the tax or the whole income itself. Centre and states have freedom to levy cess over and above GST and may not even need prior approval of the GST Council. No bar has been imposed far beyond the GST on the tight task of cases. The draft bill put before the parliament at first was not affirmed in 2016 as a result of the work of 246A or Section 18 of the Constitution (Hundred and First Amendments Act). The resulting situation will probably conflict with the spirit of the GST framework and with multiple levies and resulting cascading. The assessments must have time gaps to meet the GST requirements. The assesses i.e. the Mohit Minerals were not aware that there will be implementation of GST cess when they paid the Clean energy cess or the environment cess which was paid by the assessee even after the taxation rates were increased from 100 Rs. per ton to 400 Rs. per ton. The assessee have no mala

fide intention to evade tax but are asking for the set off of the already paid tax on clean energy cess.

From this judgment it is clear that the government has found another route to collect the same amount of tax that had been existent as Service Tax, but under the new name called Compensation GST. The sole objective of the GST to cut down the double taxation or the cascading effect is not seen initially the cess which was applied under the service tax was on the tax i.e cess was tax on tax levy. But the GST compensation cess is levied on the total amount of the supply under CGST and IGST. Though the court justified that the laws were separate but it was on the same subject. Final burden of both the tax is applied on the consumers.

## **CONCLUSION**

The effect of the judgment was severe on related coal companies that resulted in decreed profits, increase in commodity price risk, and increased competition as import of commodities are regulated by government guidelines. Adverse guidelines of the government influence the availability of imported coal, which can have adverse effects on the company's business. The industry is highly competitive due to its many small and large players due to low barriers to entry. The commoditized nature of the coal industry also limits industry players' pricing power. The decision did not promote the country's growing industries and economies.