

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 11410 of 2019****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2019  
In R/SPECIAL CIVIL APPLICATION NO. 11410 of 2019**

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**M/S INDIA COKE AND POWER PRIVATE LIMITED****Versus****UNION OF INDIA**

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**Appearance:****MR A.R. MADHAV RAO, ADVOCATE with MR MAULIK NANAVATI, MR  
MIHIR GUPTA AND MR NIYANT R BHIMANI, ADVOCATES for the Petitioner  
for the Respondent(s) No. 1,2,3,4,5**

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**CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI  
and  
HONOURABLE MR.JUSTICE V. B. MAYANI****Date : 03/07/2019****ORAL ORDER****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Mr. A. R. Madhav Rao, learned advocate with Mr. Maulik Nanavati and Mr. Mihir Gupta, learned advocates for the petitioner invited the attention of the court to an order dated 9<sup>th</sup> February, 2018 passed by this court in Special Civil Application No.726 of 2018, wherein the court has passed the order in the following terms:

*“The petitioner has challenged vires of Notification No. 8/2017-Integrated Tax [Rate] dated 28th June 2017 and Entry 10 of the Notification No. 10/2017-Integrated Tax [Rate] also dated 28th June 2017. The petitioner is an importer of non-cooking coal and on*

*such imports, the petitioner pays Custom duty, the value of which includes Ocean Freight. On the same valuation, the petitioner also pays tax under the Integrated Goods & Service Tax Act, 2017 ["IGST Act" for short]. The petitioner's grievance is that under the impugned Notifications, the petitioner is asked to pay tax at the prescribed rate all over again on the ocean freight. The petitioner's challenge has principally three elements viz., [a] having paid the tax under IGST Act on the entire value of imports; inclusive of the ocean freight, the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification; [b] in case of CIF contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism, and [c] in case of High Sea sales, the burden is cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/transporter. Counsel for the petitioner submitted that the impugned Notifications are ultra vires the Act and are in any case in exercise of excessive delegation of powers of subordinate legislation.*

*Notice and notice as to interim relief, returnable on 9th March 2018.*

*Direct service is permitted."*

2. The attention of the court is also invited to the order dated 12.12.2018 passed by this court in the said writ petition, whereby the court has granted interim relief directing that no coercive steps shall be taken against the petitioner pursuant to the impugned notification in the meanwhile.

3. In the aforesaid premises, **Issue Notice** returnable on 17<sup>th</sup> July, 2019. In the meanwhile, no coercive steps shall be taken against the petitioner pursuant to the impugned notification.

Direct Service is permitted.

(HARSHA DEVANI, J)

(V. B. MAYANI, J)

B.U. PARMAR

