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UNION OF INDIA V. MOHIT MINERALS: AN ANALYSIS OF THE CONSTITUTIONALITY OF GST, POOLED SOVEREIGNTY & FISCAL FEDERALISM IN INDIA

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Abstract

The Government of India in the year 2017 brought about the creation of the Goods and Service Tax format through the occurrence of the 101st constitutional amendment. The creation of the same took place through an unprecedented process in the Indian Parliament during the late midnight hours wherein the concept of a renewed Tax that would amalgamate and unite the country's financial state and market. Its constitutionality was challenged before the Supreme Court in the *Union of India v Mohit Minerals*, and this paper attempts to analyse the consequences of this precedent on Indian constitutional jurisprudence. It attempts to understand the relationship (specifically fiscal) envisioned by the Constituent Assembly between the Centre and its states and understand its effects on the current fiscal federalism pervading the legislatures.

This paper aims to analyse the validity of the GST Council and its recommendations made in the form of notifications by exploring the impact that the 101st Constitutional Amendment (2016) had made on the Court's judgement. By examining the intricacies of the evolving Centre-State relations, especially on matters pertaining to tax laws and GST, the interplay between the Legislature, the Judiciary, and the Executive in question, this paper aims to shed light upon the various questions that have been raised regarding the constitutional validity of the GST Council's recommendations, the fault of excessive delegation, extra-territorial tax and double taxation.

This paper begins with an introduction to the 101st Constitutional Amendment, which introduced the GST regime. Further using the FILAC method, the paper then critically analyses the judgement of the Supreme Court in *Mohit Minerals*. Finally, it looks at the Indian federal system and the toppling

of the list arrangement in the 7th schedule and discusses the effect of the GST on the Indian ‘union of states’.

Keywords: Goods and Service Tax, Mohit Minerals v Union of India, Pooled Sovereignty, Fiscal Federalism, 101st Amendment

Introduction:

The six-year lifespan of the GST concept will be completed in July of 2023. GST as a concept was anticipated to revolutionise indirect tax reforms. It was expected that by implementing it, the governments (Centre and State) would be able to address a number of issues, including tax evasion, the cascading effect of taxes, competition among states to attract investment, and most importantly, an increase in the tax GSDP/GDP ratio, allowing all governments greater discretion and spending power. Articles 268 to 281 of the Indian Constitution lays down a set of relevant provisions that closely relate to the centre and state financial relations. It sets a standard of direction in order for both the Centre and State to coordinate and work together for the purpose of levying an agreed-upon amount of collection of taxes. The concept of GST (Goods and Service Tax) was first introduced in the 101st Amendment of the constitution in 2016, which led to a notable alteration of the entire system of financial regulations and relations between the two bodies i.e. the Centre and the State. A new article, 269-A, was added with the most recent 101st Amendment, bringing about some significant modifications that would impact the entire Indian Economy..

The three main elements behind the advent of Article 269A(1) are, first, the element of levying and collection of the Goods and Services Tax (GST); secondly, its application to interstate trade or commerce that exists in and out of the country and thirdly, is the fact that the Parliament is the only body with the authority to establish the law governing the division of taxes collected under this article in accordance with the recommendations of the GST Council.¹ The main objective behind the implementation of GST was to subsume various indirect taxes into one tax net in order to reduce complexity in tax procedure, eliminate the cascading effect of taxation and reduce tax evasion. GST was also a means to create one nation, one market so that the free movement of goods and services

¹ “GST and Autonomy of States.” Economic and Political Weekly, vol. 45, no. 4, 2010, pp. 5–6.

could help the growth of the Indian economy.² It brought the fundamental concept of “One nation, One tax”, which is ideally what any federal or quasi-federal country would require for the smooth functioning of an economy.

The main reason behind the decision of implementing GST was due to the lack of uniformity and transparency in levying numerous taxes by the Centre and State. A few of the taxes that have been forgone and discontinued include the Central Exise, Customs duty, Service Tax and the States VAT.³ The goods and service tax is further classified and grouped into SGST for the States, CGST for the Centre and a third Tax known as IGST, which levies taxes on all interstate and intrastate transactions that occur.⁴

The 101st Constitutional Amendment was inserted to include the required alterations to the constitution to enable the GST regime to come into effect. The country's indirect taxes policy underwent a significant transformation as a result of the GST Acts. The "One Nation, One Tax" system, which integrates the nation's revenue structure, served as the primary impetus of these developments. This goal has been achieved during the past five years by the states earnestly as it was practically obligatory to implement the GST council's proposal. In actuality, all decisions but one were reached by consensus. But the Supreme Court has made it clear that the GST council's recommendations are purely advisory following its ruling in Mohit Mineral Pvt. Ltd. v. Union of India. This decision could have major repercussions and possibly shake the GST system as a whole.

GST & ‘Pooled Sovereignty’

By introducing the 101st amendment to the Constitution at an unprecedented midnight session of Parliament in July 2017, the nation's legislature announced the implementation of a goods and services tax system which is intended to harmonise the Indian marketplace. By citing the initiative as an illustration of collaboration between the states and the Union, it was hoped to allay any concerns that the tax would undermine Indian federalism. The move was referred to as a "voluntary pooling of

² Jain, Shreya (2016), “The Goods and Services (GST) Regime through the lens of Fiscal Federalism in India”, Indian Law Institute, Law Review

³ Ms. Joyline Clara, A Comparative Study of GST And VAT Tax Systems, IOSR Journal of Business and Management

⁴ Gupta, CA. Upender. “INTEGRATED GOODS AND SERVICES TAX (IGST).” National Law School of India Review, vol. 28, no. 2, 2016, pp. 134–42,

sovereignty"⁵ by Arvind Subramanian, who served as the Indian government's senior economic advisor at the time.

'Pooled sovereignty' has its roots in the founding of the European Union, when the member nations collectively agreed to delegate some of their decision-making powers to the EU Council⁶. Similar to the same is the idea that lies behind GST in the country of India, wherein it is seen that both the Parliament as well as the State Legislative Assembly have come to a combined agreement to entrust a portion of their duties and powers to the selected council known as the 'GST Council' with the main intention of aiding the procedure of creating an entirely updated tax code for the Indian Economy to thrive on. Thus, all along, it was believed that the Council's decision would be binding on each of the states and that any dispute that a state wanted to raise would have to be resolved within the structures built into the system⁷. The Supreme Court's decision in *Union of India v. Mohit Minerals*⁸, where a three-judge bench led by Justice DY Chandrachud held that the GST Council's decisions have no effect on legislative bodies and that both Parliament and the state legislatures possess plenary powers to make laws as they deem fit, has cast doubt on this notion of a 'pooled sovereignty which is seen as the cornerstone of the GST's execution.

The future of centre-state relations in India will therefore depend on how states respond to this law and how much they decide to change their various GST legislations, according to this study, which evaluates this landmark decision and its impact on the future of Indian federalism.

This paper begins with an introduction to the 101st Constitutional Amendment, which introduced the GST regime. Further using the FILAC method, the paper then critically analyses the judgement of the Supreme Court in *Mohit Minerals*. Finally, it looks at the Indian federal system and the toppling of the list arrangement in the 7th schedule and discusses the effect of the GST on the Indian 'union of states'.

⁵ 'One Nation, One Tax', The Economist, 2016, Available on: <https://www.economist.com/asia/2016/08/06/one-nation-one-tax>

⁶ John Peterson, *The European Union: Pooled Sovereignty, Divided Accountability*, Political Studies (1997) 45(3), 559–578.

⁷ Suhrith Parthasarathy, *Fiscal Federalism and the Centralising Drift – The Supreme Court's GST Judgment*, Indian Constitutional Law and Philosophy (2022)

⁸ *Union of India v. Mohit Minerals (P) Ltd.*, (2022) SCC ONLINE SC 657

Critical Analysis: *Union of India v. Mohit Minerals*

Facts of the case:

The respondent in this case, Mohit Mineral Pvt. Ltd., was in the business of importing non-coking coal into the Indian subcontinent from other nations.⁹ After importing the products, the appellant distributed them to other businesses in India. The exporter was in charge of covering the costs of the article's freight due to the nature of the arrangement the appellant already had with the exporters. The exporter pays the freight and insurance costs under the system known as CIF ("Cost-Insurance-Freight"). However, with the FOB ("Free-on-Board") arrangement, the importer is responsible for paying the freight and insurance costs.

The applicable IGST and customs fees in conformity with the Customs Act of 1962 were paid by the respondent, who did pay two separate taxes on the value of the items. The service tax on maritime freight was not chargeable prior to the implementation of the GST Acts in 2017.¹⁰ However, it was seen that the Central Government had changed it to be taxable mainly on a Reverse Charge Basis that was brought about with the Notifications 08/2017 and 10/2017, which required the recipient of the good or service to go through with the paying of the tax.

The appellant argued that because both the recipient and the supplier were foreign corporations, it was not required to pay the IGST when the transportation of the products was done on a CIF basis, even though it did not oppose the payment of the IGST when the items were transported on a FOB basis. They further claimed that this was against Section 5(3) of the IGST Act.¹¹ The Notifications dated 08/2017 and 10/2017 were thus contested by the respondents as being ultra vires.

Issues:

- I. Whether the GST Council's recommendations were mandatory or merely suggestive?
- II. Whether The Impugned Notification Suffers from Excessive Delegation?
- III. In accordance with Section 5(3) of the IGST Act, whether an ocean freight transaction for the import of goods qualified as a type of valid service supply?

⁹ Para 2, *Union of India v. Mohit Minerals (P) Ltd.*, (2022) SCC ONLINE SC 657

¹⁰ Para 3, *Union of India v. Mohit Minerals (P) Ltd.*, (2022) SCC ONLINE SC 657

¹¹ Para 9, *Union of India v. Mohit Minerals (P) Ltd.*, (2022) SCC ONLINE SC 657

Analysis**1. The GST Council - Validity and Nature of Recommendations**

One of the first questions that arose in the Court was the issue of the nature and recommendation of the GST Council with respect to the impugned notifications 08/2017 and 10/2017. The GST Council was established by Article 279(1) of the Constitution of India, intended to be a “joint forum” for the Centre and the States. The question raised in Court was whether the recommendations were mandatory or recommendatory in nature – and consequently, whether they were binding on the Union and States¹².

The said recommendations that were asserted and stated by the Government were seen to be obligatory and compulsory in nature. It was stated that the very foundation of the GST system and its essence was to ensure that there is uniformity in all the tax slabs across the nation, between all states. Therefore, they stated that it was compulsory for the recommendations made by the GST Council to be followed by the Union and States. It was also put forward that Article 27-A (11) of the Constitution of India provides for a dispute resolution mechanism establishing the GST Council’s adjudicating role to any dispute that might arise between the Government of India and the states. It was stated that this particular provision was inserted into the Constitution because of the consideration of the possibility of any such dispute arising between the Centre and the States¹³.

On the other hand, it was argued that the GST Council's suggestions were optional in nature. It was stated that the Constitution has a federal nature, and mandating the Council’s recommendations would be a breach of the autonomy of the States and entirely undermine the power of the law-making bodies - the Parliament and the State Legislatures. Therefore, Mohit Minerals Pvt. Ltd. contended that the recommendations were not mandatory and should be interpreted as merely recommendatory in nature¹⁴.

The Court addressed this matter in two limbs. Firstly, the Court stated that, before the 101st Constitutional Amendment (2016), the Union and the States had “exclusive jurisdiction” on matters regarding taxation in their respective domains. However, post the 2016 Constitutional Amendment,

¹² Para 2, Union of India v. Mohit Minerals (P) Ltd., (2022) SCC ONLINE SC 657.

¹³ Para 3 Union of India v. Mohit Minerals (P) Ltd., (2022) SCC ONLINE SC 657

¹⁴ Supra.

the exclusivity of matters regarding taxation had evolved to be a “simultaneous right”, – which meant that the insertion of Article 279A forged the Union and the States’ relationship with regard to taxation matters. This also implied that the Union and the States were not to act independently and were now interdependent on each other, as mentioned in Article 246A¹⁵. Concluding their judgement, the Court stated that the simultaneous right and power of taxation that rests upon both the Union and the States were to be exercised in “cooperation and collaboration” in order to enable a workable fiscal model¹⁶.

One of the arguments put forward by the Government was that the federal structure of the Constitution had a “centralising effect” - to which the Court objected. It can be observed that the recommendations made by the GST Council were made without explanation and were invalid. Additionally, the word “recommendation” merely has persuasive value – as observed in the Supreme Court’s judgement in the case of *Manohar v. State of Maharashtra*¹⁷. The recommendations made by the GST Council are required by a number of provisions of the CGST Act and the IGST Act. However, these laws must be construed in light of the legislative goal of a uniform system of taxation. Therefore, even if some provisions are interpreted as binding, it does not imply that all such recommendations are the same¹⁸.

2. Excessive Delegation of Power to the GST Council

Another important question that arose from the case was whether the notifications issued by the GST Council were a result of excessive delegation. For context, Section 5(3) of the Integrated Goods and Services Tax Act empowers the GST Council to identify and determine taxable goods and services. This is argued to be an issue of excessive delegation - which means that this provision gives unreasonable power to the GST Council. However, this issue can be resolved through a “basic essential framework” to be made by the legislature, with other particular provisions to be processed through delegated legislation. By performing their “essential legislative functions”, especially relating to GST laws, the Legislature would be able to pass laws on the rate of taxation, the subject matter of tax, taxable persons, etc., without interference and misinterpretation. Therefore, the Court rightly held

¹⁵ Ajitesh Kir, India’s Goods and Services Tax: A Unique Experiment in Cooperative Federalism and a Constitutional Crisis in Waiting, 69 Can. Tax J. / Rev. Fisc. Can. 391 (2021).

¹⁶ NLIU Centre for Business and Commercial Laws, Mohit Mineral v. UoI: The Make or Break for the GST Regime?, NLIU Centre for Business and Commercial Laws (Apr. 26, 2021), <https://cbcl.nliu.ac.in/taxation/mohit-mineral-v-uoi-the-make-or-break-for-the-gst-regime/>.

¹⁷ State of Maharashtra v. Manohar, 1998 Cri.L.J. 335 (India Oct. 20, 1997).

¹⁸ Suhrith Parthasarathy, Fiscal Federalism and the Centralising Drift – The Supreme Court’s GST Judgment, Indian Constitutional Law and Philosophy (2022).

that the impugned notifications by the GST Council were a result of excessive delegation and that they were only meant to be clarificatory. The real authority on matters regarding GST law-making lies with the Legislature¹⁹.

3. Ocean Freight Charges and - Inter-State Supply or Extra-Territorial Tax?

Additionally, the Court dealt with the question regarding whether an ocean freight transaction for the import of goods is a valid category of supply of services under Section 5(3) of the IGST Act. This was addressed by the Court in two limbs. Firstly, whether CIF-based imported goods constituted an inter-state supply or attracted an extra-territorial tax. Given that the supply took place in India and was thus considered an interstate supply, it was determined that there was unquestionably a territorial nexus of taxation. Secondly, whether importers are deemed to be service recipients under the CIF contract. It was held that the company was deemed to be the recipient of service despite CIF-based transportation, as the Court held that this would be in alignment with the GST regime²⁰.

4. Double Taxation

Lastly, the Court addressed the question of whether there was an issue of double taxation. The respondents in the current case brought up the argument that there existed a complex pre-existing supply due to the fact that the tax was already applied on both the goods and the freight involved, and thus any external and additional tax amount would create a significant burden of double taxation. But on a different front, the Government claimed that the freight services that were mentioned would fall under a different bracket of tax. The Court rejected the latter claim and barred the levy of tax on freight services, stating that the legislative intent was to bundle similar goods and services together²¹.

GST and its Impact on Centre-State Relations

The drafters of the Indian Constitution were careful to divide powers skillfully and cautiously between the centre and its states. Although there were some domains where the Union was given precedence and priority, the Assembly was eager to give the States substantial power when it came to revenue

¹⁹ CA Sanjay Kumar Agrawal, GST Law Making Powers under the Constitution of India, TaxGuru (last visited Apr. 13, 2023), <https://taxguru.in/goods-and-service-tax/gst-law-making-powers-constitution-india.html>.

²⁰ Supra.

²¹ NLIU Centre for Business and Commercial Laws, *Mohit Mineral v. UoI: The Make or Break for the GST Regime?*, NLIU Centre for Business and Commercial Laws (Apr. 26, 2021), <https://cbcl.nliu.ac.in/taxation/mohit-mineral-v-uo-i-the-make-or-break-for-the-gst-regime/>.

and taxation. The drawn-out sections made sure that the taxing authorities did not conflict with one another. Along with other indirect taxes like customs and excise duties, the Union was offered income tax (with the exception of tax on agricultural income). On the other hand, state governments were granted the sole right to impose taxes on both the sale of products and their entry into a state. This division was created by placing these subjects in the appropriate Lists- I and II of the 7th Schedule. Though heavily criticised, the concurrent list (List III) was devoid of any tax entry- this allowed for a clear division of taxation powers between the Union and its States. This constitutional arrangement was, however toppled by the introduction of the GST. It removed a number of topics from List II that the state government had previously held absolute control over. For instance, entries 52 and 55 dealt with "taxes on the entry of goods into a local area for consumption, use, or sale therein" while entry 52 dealt with "taxes on advertisements."

Furthermore, in contrast to the much-lauded concept of cooperative federalism that was widely believed to motivate the GST, the court held-citing research by Jessica Bulman-Pozen and Heather K. Gerken- that what the regime actually encourages is a type of 'uncooperative federalism.'²² This debate, according to Justice Chandrachud, is "valuable since 'it is desirable to have some level of friction, some amount of state contestation, some deliberation-generating froth in our democratic system.' Therefore, the States can use various forms of contestation if they disagree with the decision of the Centre. Such forms of contestation are also within the framework of Indian federalism. The GST Council is not merely a constitutional body restricted to the indirect tax system in India but is also an important focal point to foster federalism and democracy."²³ Therefore, if the States disagree with the Centre's judgement, they may oppose it in a variety of ways. Such contestation methods fall well under the aegis of Indian federalism as envisioned by the Constituent Assembly.

The ruling judgement in the current case quotes HM Seervai, who enumerated a number of significant responsibilities that had been delegated exclusively to the state governments in support of his assertion that India was a federal state. According to Seervai, *"The view that unimportant matters were assigned to the States cannot be sustained in light of the very important subjects assigned to the States in List II, and the same applies to the taxing powers of the States which are made mutually*

²² Suhrith Parthasarathy, *Fiscal Federalism and the Centralising Drift – The Supreme Court's GST Judgment*, Indian Constitutional Law and Philosophy (2022)

²³ Para 51, Union of India v. Mohit Minerals P. Ltd. 2022 SCC ONLINE SC 657

exclusive of the taxing powers of the Union so that normally the States have an independent source of revenue of their own.”²⁴ He further notes that “the legislative entries relating to taxes in List II show that the sources of revenue available to the States are substantial and would increasingly become more substantial. In addition to the exclusive taxing powers of the States, the States become entitled either to appropriate taxes collected by the Union or to a share in the taxes collected by the Union.”²⁵

Conclusion

There are three things to note, by way of conclusion:

Firstly, that the ruling in Mohit Minerals is not a reflection of the Court's comments on the fiscal strategies of the legislature or on the perks of the implementation of a single taxation system. If such a system is wanted, it is up to the Union and the state governments to deliberate and decide in a democratic forum whether or not that forum is held inside the GST Council's walls. However, a state government cannot abdicate its fundamental legislative authority to do so if it feels that it must disobey one or more Council decisions. Thus, it is argued that the 101st Amendment would become meaningless if it were given any other interpretation.

Secondly, that the case of Mohit Minerals Pvt. Ltd. v. Union of India will have a significant impact on the GST regime in India. By outlining the fact that the Union and the States were to go from having “exclusive jurisdiction” on matters regarding tax within their own domain to having “simultaneous jurisdiction and simultaneous rights”, the Court pushed for better Centre-State relations on taxation matters and GST laws by encouraging “cooperation and collaboration” between the Union and the States. This judgement will, therefore, have both statutory and constitutional implications.

Thirdly, the impact of the Mohit Minerals on federalism in India. It is argued that the amendment, as recognised in the judgement, has toppled the vision of Indian federalism with the amendment of the allotment of entries in the 7th schedule.

²⁴ H. M Seervai, Constitutional Law of India: A Critical Commentary, Volume 1, (1975)

²⁵ Para 45, Union of India v. Mohit Minerals P. Ltd. 2022 SCC ONLINE SC 657