

Burden of proving correctness of ITC claim lies upon the purchasing dealer

The State of Karnataka v. Ecom Gill Coffee Trading Private Limited¹ - Supreme Court

The Supreme Court held that mere production of the invoices and proof of payment made to vendors is not enough for discharging the burden of proof cast under the Karnataka Value Added Tax Act, 2003 ('KVAT Act'). The dealer claiming input tax credit ('ITC') must prove the actual transaction beyond doubt by establishing physical movement of goods, furnishing the name and address of the selling dealer, details of the vehicle which delivered the goods, payment of freight charges, and acknowledgement of taking delivery of goods, as well as tax invoices and payment particulars.

Facts of the case:

- M/s Ecom Gill Coffee Trading Private Limited ('the respondent') purchased green coffee beans from dealers and claimed ITC on the same.
- Upon finding irregularities in the ITC claimed, the Assessing Officer ('AO') disallowed the ITC claim, on the basis that sellers were either de-registered or did not pay taxes, or outrightly denied turnover and did not pay taxes.
- The first Appellate Authority confirmed the findings of the AO. However, Karnataka Appellate Tribunal ('the Tribunal') allowed the appeal, on the grounds

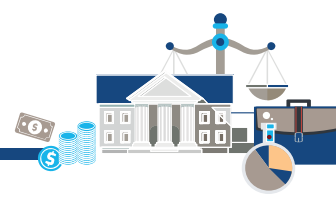
that the respondent purchased the coffee from the registered dealer under genuine tax invoices, and consequently allowed the ITC claimed.

- The revision application preferred by the revenue before the Karnataka High Court was dismissed leading to an instant appeal before the Supreme Court.

Contention by the Revenue:

- The fact of genuineness of the sales transactions was never considered.
- It was found by AO that the sale transactions were only paper transactions, as in some of the cases the registration of the sellers was cancelled, and in other cases there was nothing on record that any tax was paid by the seller. Hence, the respondent/purchasing dealers should not be entitled to ITC.
- Mere production of invoices or payment to the seller by cheque cannot be said to be sufficient, and may not be said to discharging the burden to claim ITC, under Section 70 of the KVAT Act.
- It was also submitted that actual movement of goods is required to be established, over and above the other evidence (tax invoice and payment proof).

¹ TS-99-SC-2023-VAT



Contention by the Respondent:

- Burden of proof cast under Section 70 of the KVAT Act has been discharged by producing the genuine invoices and the payment through cheques. If it is found that tax is not paid by a seller, the same needs to be recovered from the seller.
- The KVAT Act and the rules made thereunder do not provide for any other document or any other obligation which are statutorily required for the purposes of establishing the ITC claim.
- The only requirement of law is that the selling dealer is registered and has issued the tax invoice in compliance with the requirement of the KVAT Act and the rules made thereunder.
- ITC cannot be denied only because the selling dealer fails to discharge their obligation under the KVAT Act.

Supreme Court's decision:

- As per Section 70 of the KVAT Act, burden of proving correctness of ITC claim lies on the purchasing dealer claiming such ITC.
- Mere production of the invoices or the payment made by cheques is not enough, and cannot be said to be discharging the burden of proof cast under Section 70 of KVAT Act.
- The dealer claiming ITC must prove the actual transaction beyond doubt, by establishing actual physical movement of goods, and furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars.
- In cases where sellers were not registered or had not paid taxes, the respondent has not produced any further supporting material other than invoices and online payments. Thus, the AO was justified in denying the ITC. The Tribunal as well as the High Court have materially erred, in allowing the ITC

despite the concerned respondent's failure to prove the genuineness of the transactions.

- Delhi High Court's ruling in case of **Quest Merchandising India Private Limited²** was not considered, as burden of proof was not a question before the High Court.
- Accordingly, the appeal was allowed, and the order passed by the AO denying the ITC to the concerned respondent was restored.

Dhruva Comments:

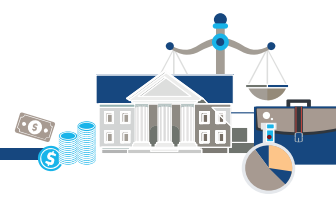
This judgement issued under the KVAT Act specifies the manner in which claim of ITC needs to be established.

Interestingly, Section 155 of the Central Goods and Services Tax Act, 2017 contains a similar provision regarding "burden of proof" towards the claim of ITC.

Applying the Supreme Court ruling, the GST Authorities can require taxpayers to substantiate their claim of ITC with help of additional documents, over and above the ITC matching requirements.

Maintaining repository of documents such as e-way bills, lorry receipts, goods receipts register etc. along with copies of invoices and payment proof would be crucial to establish the burden of proof.

² Writ Petition (Civil) No. 6093/2017, dated 26.10.2017





ADDRESSES

Mumbai

1101, One World Centre,
11th floor, Tower 2B, 841,
Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Dhruva Advisors has been consistently recognised as the “India Tax Firm of the Year” at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

Dhruva Advisors has also been recognised as the “**India Disputes and Litigation Firm of the Year**” at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review’s in its World Tax Guide.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review’s Indirect Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing** practice ranking table in ITR’s World Transfer Pricing guide.

Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication