

## Recipient not entitled for ITC unless tax is paid by the supplier

### **Aastha Enterprises v. The State of Bihar<sup>1</sup>**

Denial of Input Tax Credit ('ITC') benefit to the recipient, upon non-payment of tax by the supplier is one of the burning issues being faced by the industry.

In a recent ruling, Patna High Court ('High Court') has held that ITC cannot be claimed if the supplier has not paid the tax amount to the Government, despite collection of tax from the purchasing dealer.

#### **Issue for consideration:**

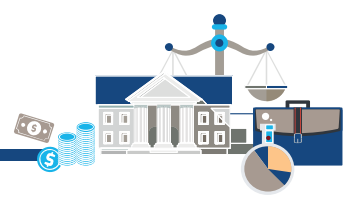
- Aastha Enterprises ('the Petitioner') filed a writ petition before the High Court to seek a decision on whether ITC can be denied to the purchasing dealer when the selling dealer has not paid tax to the Government, despite collecting it from the purchaser.
- It was also contended that the Authorities are obliged to initiate proceedings against the selling dealer who has defaulted on payment of tax collected, for which the statute has provided necessary powers of recovery.

#### **High Court's findings:**

- Section 16(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides eligibility to claim ITC and conditions towards such claim are provided in Section 16(2). These conditions are to be fulfilled cumulatively and not in isolation. If any condition is not fulfilled, then the purchaser shall not be eligible to claim the ITC.
- Relying upon the decision of the Supreme Court in the case of **ALD. Automotive Pvt. Ltd. v. The Commercial Tax Officer & Ors<sup>2</sup>**, the High Court held that the ITC is a benefit or concession and not a vested right. The benefit will be available only if all the conditions for claiming the benefit are complied with.
- Even though the purchaser has produced evidence in the form of invoices, account details showing payment made to the supplier and documents evidencing transportation of goods,

<sup>1</sup> 2023 (8) TMI 1038 - Patna High Court

<sup>2</sup> 2018 (10) TMI 814 - Supreme Court



they are still required to fulfil the condition provided in Section 16(2)(c) of the CGST Act, which states that credit can be availed by the purchaser only if tax has actually been paid to the government.

- Also, the decision of Madras High Court in the case of **D.Y. Beathel Enterprises v. the State Tax Officer, Tirunelveli**<sup>3</sup> which held that the buyer cannot be denied ITC as no recovery has been initiated against the selling dealer, cannot be relied upon, as the said decision failed to consider the provisions of Section 16(2)(c) of the CGST Act.
  - Moreover, the fact that there is a mode of recovery under the statute would not absolve the liability of the taxpayer to pay tax to the government.
  - Rejecting the double taxation argument of the Petitioner, the High Court stated that taxation is mandatory extraction for public welfare, and it's only when the collected tax reaches the government and in this case the tax was never deposited with the government.
- Based on the above, the High Court dismissed the writ petition.

#### **Dhruva Comments**

The ruling is in line with the decision of Madras High Court in the case of **Pinstar Automotive India Pvt Ltd. v. Additional Commissioner Chennai**<sup>4</sup> and **Jai Balaji Paper Cones v. The Assistant Commissioner, Sales Tax, Tiruchengode**<sup>5</sup>, wherein it was held that the recipient shall not be allowed the ITC if the condition as prescribed in Section 16(2)(c) of the CGST Act is not fulfilled.

Moreover, the Court in the case of **Pinstar Automotive India Pvt. Ltd. (supra)** discussed that a mechanism must be put in place to benefit the recipient by restoring

the reversed ITC if recovery from the supplier is made subsequently.

This ruling is contrary to a recent judgment of Calcutta High Court in the matter of **Suncraft Energy Pvt. Ltd. v. the Assistant Commissioner, State Tax, Ballygunge**<sup>6</sup> wherein it was held that revenue cannot direct the recipient of goods/services to reverse the ITC until appropriate action to recover the unpaid tax from the seller has been initiated.

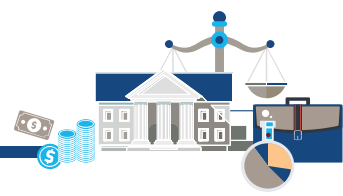
Considering divergent decisions on this very issue by different High Courts, the matter would attain finality only at the Supreme Court.

<sup>3</sup> 2021 (3) TMI 1020 - Madras High Court

<sup>4</sup> 2023 (3) TMI 1168 - Madras High Court

<sup>5</sup> 2023 (8) TMI 573 - Madras High Court

<sup>6</sup> 2023 (8) TMI 174 - Calcutta High Court



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