



Recipient cannot be deprived of ITC unless actions taken against the supplier

Suncraft Energy Private Limited and Another vs. The Assistant Commissioner, State Tax, Ballygunge¹

The Calcutta High Court ('High Court') while setting aside the Input Tax Credit ('ITC') recovery proceedings initiated by the Revenue Department against the recipient of supply for the invoices not reflecting in Form GSTR-2A, held that the recipient cannot be directed to reverse the ITC unless appropriate action has been taken against the supplier. It was further held that only under the exceptional circumstances, as clarified in the press release of the Central Board of Indirect Taxes and Customs ('CBIC'), proceedings can be initiated against the recipient.

Facts of the case:

- A show cause notice followed by a demand order was served upon M/s Suncraft Energy Private Limited ('the Appellant') directing to reverse the ITC availed during the FY 2017-18 on tax invoices not reflecting in Form GSTR-2A.
- Aggrieved by the said order, the Appellant filed an appeal before the High Court contending that the action of the Department towards seeking recovery

of ITC, without conducting any enquiry on the supplier, is arbitrary and not justified.

- **High Court's Order:**

The High Court made following observations:

- In order to avail ITC, the conditions under Section 16(2) of the Central Goods and Services Tax Act, 2017 ('CGST ACT') are required to be fulfilled. In the instant case, the fact that the Appellant is in possession of a valid tax invoice and has received the services is not in dispute. The payment of tax to the supplier has also been substantiated through the tax invoice and bank statement.
- A press release dated May 04, 2018, issued by CBIC clarifies that recourse of recovering ITC from recipient shall be taken in exceptional situations like missing supplier, closure of business by supplier or supplier not having adequate assets etc. Thereby implying that recovery, at first, should be initiated from the seller.
- Also, a press release dated October 18, 2018, issued by CBIC clarifies that Form GSTR-2A is

¹2023 (8) TMI 174 - CALCUTTA HIGH COURT



just a facility to view the ITC and does not impact the availment of ITC by the recipient on a self-assessment basis. The said view was also endorsed by the Apex court in the case of ***Union of India (UOI) vs. Bharti Airtel Ltd. And Ors.***²

- Reliance was also placed on the decision of the Delhi High Court in the case of ***Arise India Limited and Ors. vs. Commissioner of Trade and Taxes, Delhi and Ors***³ wherein the authorities were precluded from invoking Section 9(2)(g) of the erstwhile Delhi Value Added Tax Act, 2004 to deny the input VAT credit to a bona-fide buyer. This judgment was upheld by the Apex Court.⁴
- Basis the above, the High Court allowed the appeal and set aside the impugned demand order, with a direction to the Department to first proceed against the supplier, and only in the exceptional circumstances (as per CBIC press release) proceedings against the Appellant can be initiated.

Dhruva Comments

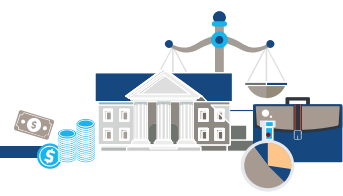
Constitutional validity of Section 16(2)(c) has already been challenged before the various High Courts. While an outcome of such challenge is awaited, there are a plethora of rulings under the erstwhile VAT regime wherein it has been categorically held that tax credit cannot be denied to a *bona-fide* buyer for non-compliance by the supplier.

Given this, the present ruling shall have a positive impact in curbing the arbitrary action by the Department towards simply denying ITC to a bona-fide recipient (if the tax invoices do not appear in Form GSTR-2A), without conducting an enquiry and/or acting against the defaulting supplier.

² 2021 (11) TMI 109 - SUPREME COURT

³ 2017 (10) TMI 1020-DELHI HIGH COURT

⁴ 2018(1) TMI 555 - SC ORDER



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