

## Input tax credit availed by recipient cannot be rejected solely because supplier's registration was cancelled retrospectively – Calcutta HC

19 June 2023



## Summary

The Calcutta High Court (HC) ruled that the petitioner's input tax credit (ITC) cannot be denied only because the registration of the supplier of the petitioner was cancelled retrospectively. The HC observed that the petitioner had checked the government portal to ensure that the supplier was a registered taxable person and paid the amount for purchased articles and tax to the supplier through the bank, not in cash. The HC further stated that without appropriately verifying the relevant documents supporting the claim, the Revenue cannot argue that the petitioner failed to comply with any statutory obligation. Therefore, the HC directed the Revenue to re-examine the matter, considering the petitioner's supporting evidence.

### Facts of the case

- M/s. Gargo Traders (the petitioner) had claimed ITC against purchases made from Global Bitumen (the supplier). The petitioner had filed a tax invoice cum challan, reflecting the purchase from the supplier, and duly made the payment through the bank.
- The petitioner was aggrieved by the impugned order issued by the authorities for not allowing the ITC benefit on purchases made from the supplier and imposed a penalty and interest.
- Therefore, the petitioner filed the present writ application, challenging the order passed by the Joint Commissioner wherein the petitioner's appeal was rejected, and the order passed by the adjudicating authority was upheld.

### Submissions of the petitioner

- The petitioner submitted the invoice cum challan, debit note, e-way bill, transportation bill evidencing the supply, and bank statement evidencing the payment. Therefore, it was clear that the petitioner had purchased the goods from the supplier and had paid the amount from its bank account.

- The petitioner placed reliance on the judgement in the case of LGW Industries Limited and the Delhi HC judgement in Balaji Exim in support of its contention.

### Submissions of the respondents

- The respondents, upon inquiry, noted that the supplier, from whom the petitioner made purchases, was 'fake and non-existing', and even the bank account of the supplier was opened basis the fake documentation. Further, the ITC claim of the petitioner was not supported by any relevant documents.
- The respondent submitted that the petitioner did not verify the genuineness and identity of the supplier beforehand, owing to which such a claim was rejected. Further, the supplier's registration was cancelled retrospectively, which included the period in which the transaction took place.

### Calcutta HC observations and ruling [WPA 1009 of 2022, order dated 12 June 2023]

- **Petitioner's contention taken into consideration:** Taking note of the petitioner's contention that the transaction was genuine and valid, the

HC observed that the petitioner had duly verified the validity and identity of the supplier. Notably, the supplier was a registered taxable person as per the government portal. Further, the petitioner paid for the purchases, including the applicable tax, through its bank, not in cash.

- **Revenue cannot reject petitioner's claim without considering the documents relied upon:** The HC noted that the authorities dismissed the petitioner's claim without verifying the documents relied on. In this respect, the HC opined that without proper verification, it could not be contended that the petitioner had failed to comply with any statutory obligation. The HC, in view of the judgement in the case of LGW Industries Limited, decided to quash the impugned order. Furthermore, the HC directed the respondent to re-examine the matter, considering the requisite documents supporting the claim.

### Our comments

As is trite, a buyer/recipient cannot be put in jeopardy when it has duly complied with the law and has no way to ascertain and secure its supplier's compliances. However, the GST authorities have started knocking at the doors of the bonafide recipients, challenging their ITC in cases where the supplier's registration has been cancelled retrospectively.

In this respect, in the case of LGW Industries Limited and Sanchita Kundu, the Calcutta HC had held that the benefit of ITC cannot be denied only because of the cancellation of the supplier's registration, subject to the genuineness of the transaction. The present ruling aligns with the above rulings and shall set precedence in similar matters. Further, rather than conducting a post-facto activity, this ruling encourages recipients to do a comprehensive verification before engaging in a transaction with a supplier and to keep robust documentation to verify the validity of credit.

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