

Proving genuineness of the transaction and actual physical movement of the goods are prerequisites for claiming the ITC - SC

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Summary

The Supreme Court (SC) has allowed the Revenue's appeal and held that if the purchasing dealer fails to establish and prove the actual physical movement of the goods, it is not entitled to the input tax credit (ITC). The SC has further clarified that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the Karnataka Value Added Tax Act, 2003 (KVAT Act). The SC has stated that for claiming the ITC, the genuineness of the transaction and actual physical movement of the goods are the sine qua non. This can be proved only by 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, payment particulars, etc.

Facts of the case

- M/s Ecom Gill Coffee Trading Private Limited (the purchasing dealer) purchased green coffee beans from other dealers for the purposes of further sale in exports and in the domestic market.
- The Assessing Officer (AO) found that the purchasing dealer had claimed the ITC from mainly 27 sellers, and out of the aforesaid 27 sellers, six were found to be de-registered, three had effected sales to the appellant but did not file returns and pay taxes and six had outrightly denied turnover nor paid taxes. Therefore, the first appellate authority confirmed the findings of the AO and disallowed the ITC to the extent of INR 10.52 lacs.
- However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee beans from the registered dealer under genuine tax invoices and consequently allowed the ITC to be claimed. The Karnataka HC dismissed the revision applications preferred by the Revenue and allowed the ITC claimed by the appellant.
- Therefore, the Revenue filed appeals before the SC to decide upon the question of law with respect to the interpretation of Section 70 of the KVAT Act.

SC observations and ruling (CIVIL APPEAL Diary No. 230 of 2023 order dated 13 March 2023):

- **Burden to prove the correctness of the ITC lies on the dealer claiming the ITC:** As per the provisions of Section 70 of the KVAT Act, the

burden of proving that the ITC claim is correct and lies upon the purchasing dealer claiming such ITC, and such dealer has to discharge the burden. Such a burden of proof cannot get shifted to the Revenue.

- **Dealer needs to prove actual transaction:** The dealer claiming the ITC has to prove beyond doubt the actual transaction which can be proved by 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, payment particulars, etc. The aforesaid information would be in addition to tax invoices, particulars of payment, etc.
- **Mere production of invoices or payment by cheque is not enough:** If a dealer claims the ITC on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, along with the genuineness of transactions by furnishing the details mentioned above, and mere production of tax invoices would not be sufficient to claim the 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 the KVAT Act. The genuineness of the transaction has to be proved as the burden to prove the genuineness of the transaction as per Section 70 of the KVAT Act would be upon the purchasing dealer.

- **ITC can be claimed only on genuine transactions:** The intention of Section 70 is that the ITC can be claimed only on genuine transactions of sale and purchase. If a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other documents with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer is not liable to be taxed, liable to be taken at a lower rate or that a deduction of input tax is available, then such a dealer is liable to pay the penalty.
- **Essential conditions to claim the ITC:** For claiming the ITC, the genuineness of the transaction and actual physical movement of the goods are the sine qua non. The aforesaid can be proved only by 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, payment particulars, etc. The purchasing dealers have to prove the actual physical movement of the goods alleged to have been purchased from the respective dealers. If the purchasing dealer(s) fails to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it from the concerned dealers and on which the ITC has been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.
- **Dealer failing to prove the genuineness of the transaction not entitled to the ITC:** In the present case, the purchasing dealer has produced either the invoices or payment by cheque to claim the ITC. The dealer has not produced any further supporting material, as mentioned above. Therefore, it can be said that the concerned purchasing dealer failed to discharge the burden cast upon it under Section 70 of the KVAT Act. Unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to the ITC.

Our comments

This is a significant ruling and should help to control fake transactions and curb tax evasions or avilment of fraudulent ITC by taxpayers.

Though the judgement has been delivered in the context of VAT laws, it is likely to have an impact under Goods and Services Tax (GST) laws as well, as similar provisions exist under GST laws. Section 155 of the Central Goods and Services Tax (CGST) Act 2017 provides that for any person claiming that they are eligible for the input tax credit, the burden of proving such a claim shall lie on such person.

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