



Dimensions – 120th Edition

Judgments under Pre-GST era

The Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru and Others v. M/s. Rajshree Impex¹

Issue for Consideration

Whether the input tax credit (“ITC”) can be denied to the buyer on the ground of non-deposit of tax by the selling dealer?

Discussion

- The Respondent is engaged in the business of trading in iron and steel. The Respondent claimed ITC on purchases made from registered dealers in FY 2011-12.
- The Respondent is in possession of original tax invoice, e-sugam receipts and has paid through account payee cheques.
- The assessing authority passed a re-assessment order denying ITC to the Respondent on purchases made from three selling dealers on the grounds that the said dealers were non-existent, bogus dealers and had issued tax invoice to the Respondent without selling the goods to enable the Respondent to claim ITC. The assessing authority also levied

interest and penalty under the provisions of Karnataka Value Added Tax Act, 2003 (“KVAT Act”).

- Aggrieved, the Respondent filed an appeal before the Tribunal. The Tribunal set aside the re-assessment order of the assessing authority and held that ITC cannot be denied merely on the ground that the selling dealer failed to discharge his tax liability.
- Aggrieved by the order of the Tribunal, the revenue preferred a revision petition before the High Court. The High Court observed as follows:
 - The provisions of the KVAT Act provides a detailed mechanism for conducting an audit of the registered dealers and also the launching of prosecution against the dealers who indulge in generating bogus invoices to avail ITC etc.
 - In the present case, the selling dealers from whom the goods were purchased were all registered dealers and traceable. Therefore, mere failure to deposit tax collected from the Respondent by the selling dealer cannot render the said transaction as bogus.
 - Reliance was placed on the Hon’ble Supreme Court judgment in the case of *Corporation Bank*

¹ 2021-VIL-516-KAR



v. *Saraswati Abharansala and Another*² wherein the Court held that the selling dealer collects tax as an agent of the Government. The purchasing dealer has no means to ascertain and secure the compliance of the selling dealer.

- In the instant case, the Respondent made the payment of the invoice through account payee cheques to the sellers and further, the Revenue was not able to establish that the Respondent had conspired with the selling dealers to create invoices to claim ITC fraudulently.

Judgment

The Hon'ble High Court ordered that ITC claimed should be credited to the account of the Respondent within a period of one month from the date of receipt of the certified copy of this order.

Dhruva Comments:

Availment of ITC where the seller has not deposited the tax liability has been a subject matter of litigation under the pre-GST and GST regime. Under the GST law, there are similar provisions for availment of ITC wherein one of the conditions is that the tax charged has to be paid to the government by the supplier of goods / service.

Recently, the Madras High Court in the case of *M/s. D. Y. Beathel Enterprises v. The State Tax Officer*³ has held that if the tax has not been paid by the supplier, then the recovery proceedings have to be initiated on the supplier.

Under GST, in terms of the CBIC Press Release, there shall not be any automatic reversal of ITC from the buyer on non-payment of tax by seller. Reversal of a credit from a buyer shall only be in exceptional situations like a missing dealer, closure of business, or the supplier not having adequate assets etc.

Novel Security Services v. Directorate General of GST Intelligence⁴

Issue for Consideration

Whether a show-cause notice ('SCN') issued without providing an opportunity for pre-SCN consultation as prescribed under CBEC Master Circular, is tenable under law?

Discussion

- The Appellant is a proprietary concern registered under the CGST Act, 2017 and is engaged in providing security services liable to Service tax.
- Several summons were issued to the Appellant requiring him to produce documents to facilitate the investigation of alleged evasion of Service Tax. Later, a show-cause notice ('alleged SCN') was issued by the Respondent to recover the tax evaded.
- The Appellant challenged the alleged SCN before the Hon'ble Karnataka High Court on the grounds that the SCN was issued in contravention to the procedure laid out in the CBEC Master Circular⁵ on show-cause notice, adjudication and recovery. The circular stipulates that there should be a 'mandatory pre-SCN consultation with the assessee' before an SCN is issued in cases where the duty demanded exceeds ₹ 50 Lakhs. An exception is provided the circular for preventive / offence related SCN issued by CBEC.
- The Appellant contended as follows:
 - The CBEC Master Circular was binding on the Respondent and had to be followed in letter and spirit by the Respondent.
 - The benefit of a pre-SCN consultation should not be denied to the Appellant merely due to the possibility that, at the end of the adjudication process, it may be held that the Appellant had committed an offence. In this regard, the Appellant placed his reliance on the judgment

² 2008-VIL-35-SC

³ 2021 (3) TMI 1020

⁴ 2021 (7) TMI 309

⁵ Circular No. 1053/02/2017-CX dated March 10, 2017



in the case of *Amadeus India Pvt. Ltd v. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate*⁶.

- The Respondent submitted that the Appellant was not entitled to the benefit of the Master Circular as the SCN was issued as a preventative / offence related SCN. However, the Respondent submitted that the Appellant would be provided with an opportunity to be heard and that no coercive steps would be taken to recover tax until the conclusion of the adjudication proceedings.
- The Court held that the alleged SCN would be kept in abeyance and granted the Appellant the opportunity of personal hearing him to appear before the adjudicating authority. Aggrieved by the said order, the Appellant opted to appeal and contended that the SCN issued in the present case should not be characterised as a preventative / offence related SCN and consequently that the SCN issued should be quashed.
- The Respondent submitted that:
 - Various summons were issued to the Appellant requiring them to furnish documents / records evidencing payment of Service Tax. However, the Appellant did not submit the necessary documents and kept dodging the issue citing the COVID-19 pandemic as an excuse.
 - Upon making enquiries, the Respondent came to know that the Appellant was collecting Service Tax from its clients and had suppressed its actual gross receipts from the Respondent.
 - Due to the non-cooperation of the Appellant in furnishing the required documents and to prevent the SCN from getting time barred, the Respondent registered an offence case and subsequently an SCN was also issued to recover the service tax evaded.

- The benefit of pre-SCN consultation is not eligible in the present case as an offence case was registered against the Appellant.
- The High Court considered the facts of the case and the submissions put forth by the parties and held as follows:
 - The Court observed that every attempt made by the Respondent to secure documents / information to investigate the matter was stonewalled by the Appellant.
 - The impugned SCN was not preventive in nature; an offence case was registered against the Appellant.
 - The Appellant is expected to comply with the summons issued by the Respondent and not to seek the benefit of the pre-SCN consultation mandated under the Master Circular. The benefit of the Master Circular is not a one-way traffic and cannot be misused by the Appellant.

Judgment

The Hon'ble High Court dismissed the appeal and held that the Appellant was not entitled to a pre-SCN consultation in the present case. Nonetheless, the Court directed the Respondent to keep the impugned SCN in abeyance and grant an opportunity to the Appellant of being heard in terms of the Master Circular dated March 10, 2017 and also reserved liberty to the Respondent to revive the SCN should the Appellant not be able to establish that he had deposited the tax recovered from his service recipients.

Dhruva Comments:

The guidelines for pre-consultation before the issuance of an SCN are framed to promote voluntary compliance and to reduce litigation.

The Hon'ble Madras High Court has recently held in the case of *Indriya Construction Company v. The Additional Commissioner Chennai*⁷ that the pre-consultation procedure is provided by the CBEC in its Master

⁶ 2019 (5) TMI 669

⁷ 2020 (12) TMI 64



Circular even though there is no such statutory requirement under law and the same cannot be misused to abuse the adjudicating process.





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