

Non-reflection of invoices in FORM GSTR-2A cannot be sufficient ground for denying input tax credit - Kerala HC

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Summary

The Kerala High Court (HC) quashed the assessment order passed by the assessing authority (AA) rejecting the input tax credit (ITC) on the ground of merely non-reflecting invoices in FORM GSTR-2A. The HC held that the petitioner is burdened to prove the authenticity of transactions between it and the supplier using facts and evidence. Further, the HC directed the AA to give the petitioner the opportunity to submit evidence regarding the ITC claimed and ruled that the petitioner should be allowed the ITC if the AA concludes that the claim is bonafide and genuine.

Facts of the case

- Diya Agencies (the petitioner) availed ITC during the Financial Year 2017-18 under the heads 'CGST' and 'SGST'. The department has denied an excess claim of ITC amounting to approximately INR 1 lakh under the 'CGST' and 'SGST' heads on the ground that such credit amount was not reflected in FORM GSTR-2A.
- Aggrieved by the assessment order, the appellant filed a writ petition before the HC.

Petitioner's contentions:

- The petitioner contended that it had fulfilled all the conditions for availing of the ITC prescribed u/s 16(2) of the CGST Act. Further, the availability/non-availability of ITC in FORM GSTR 2A is not in the petitioner's control, and the AA should independently examine the ITC of the assessee irrespective of the amount mentioned in FORM GSTR-2A.
- The petitioner also submitted that in the absence of a deposit of tax by the supplier, the AA cannot ask the petitioner to pay the tax again.
- The petitioner referred to the press release, clarifying that FORM GSTR-2A is in the nature of taxpayer facilitation and should not impact the taxpayer's ability to claim ITC based on self-assessment.

Further, it is incorrect to believe that the ITC can be availed based on a reconciliation between FORM GSTR-2B and FORM GSTR-3B before the due date for filing of FORM GSTR-3B for a particular month; the same exercise can be done thereafter also.

- The petitioner relied on the HC's decision in the case of Suncraft Energy Private Limited, wherein it was held that the AA should act against the selling dealer if it is found that the dealer had not deposited the tax paid by the assessee. Further, in the SC's decision, in the case of Bharti Airtel Ltd, it was held that FORM GSTR-2A is a facilitator for self-assessment, and it should not impact the ITC availed.

Kerala HC's observations and order (W.P.(C) 29769/2023 dated 12.09.2023):

- **Burden of proof establishing genuineness of transaction lies with the recipient:** The HC relied upon the SC's decision in the case of Ecom Gill Coffee Trading Private Limited and held that the petitioner has the burden of proving the authenticity of transactions between him and the supplier using facts and evidence. Further, upon perusal of the assessment order, the HC stated that the petitioner cannot be held responsible for the amount not remitted by the supplier.

- **Rejection of ITC merely due to non-appearing in FORM GSTR-2A is not sufficient ground:** The HC found that the order was not sustainable in terms of denying the ITC. Therefore, the HC directed the AA to give the petitioner an opportunity to submit evidence regarding the ITC claim. The HC further held that the petitioner should be allowed the ITC if

the AA concludes that the claim is bonafide and genuine.

Our comments

Earlier, in the pre-GST era, the SC, in the case of Ecom Gill Coffee Trading Private Limited, had stated that the purchasing dealer has to prove beyond doubt the actual transaction by furnishing the details of the selling dealer, details of the vehicle, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices, and payment particulars, etc. Similarly, under the GST regime, taxpayers have the opportunity to prove the genuineness of their ITC claims by providing evidence.

Recently, the Calcutta HC, in the case of Suncraft Energy Private Limited, also held that the recipient cannot be asked to reverse the ITC in case of a mismatch in returns without investigation on the supplier.

The present ruling is a significant development under the GST era, which emphasises that non-reflection of the ITC in FORM GSTR 2A cannot be a sufficient ground for denial. This ruling may provide relief to businesses facing similar issues and shall set precedence.

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