

## SC dismisses appeal against the Calcutta HC's order affirming that ITC cannot be denied due to supplier's default to pay tax

15 December 2023



## Summary

The Honourable Supreme Court (SC) dismissed the department's appeal and upheld the Calcutta High Court decision, which had set aside the demand arising out of excess input tax credit (ITC) availed by the assessee against the invoices which did not reflect in its GSTR 2A, resulting in difference in GSTR-2A and GSTR-3B. The HC had observed that the assessee had satisfied all the prerequisites of availing ITC, and such entitlement cannot be denied due to non-payment of the tax by the supplier despite collecting the same from the assessee. The HC had pertinently emphasised the trite principle that the purchasing dealer cannot be made to bear the consequences for default of selling dealer and permitted the entitlement of ITC to the assessee.

### Facts of the case

- Suncraft Energy Private Limited (the assessee) had procured goods and services from its supplier after duly paying the value and applicable tax amount. Accordingly, the assessee had availed ITC of the same.
- However, the invoices pertaining to the said supply were not reflected in the GSTR-2A of the assessee, resulting in difference with GSTR-3B.
- Because of this difference, the department had initiated the recovery of the excess ITC availed by the recipient, which consequently led to demand of tax, interest and penalty.

### Calcutta HC's observations and order [MAT 1218/2023; Order dated 02 August 2023]

- The HC stated that GSTR 2A does not impact the taxpayer's ability to avail ITC. Rather it only facilitates in taking an informed decision at the time of self-assessment as also clarified in the CBIC Press Release dated 18 October 2018.
- Furthermore, the HC relied upon the SC decision in the case of *Bharti Airtel Limited* and highlighted that the effect

and purport of GSTR 2A is facilitatory in nature.

- Invoking the principle laid down by the Delhi HC in the case of *Arise India Limited* that purchasing dealer cannot be made to bear consequences for default committed by selling dealer, the HC had held that when the assessee had fulfilled all the requisite conditions to claim ITC, i.e., he was in possession of the tax invoice, had received the goods and services and also paid for the same, he is entitled to claim ITC and the same cannot be denied.
- The HC had further emphasised that in the absence of any collusion between the purchasing and selling dealer, the department will primarily pursue proceedings against the selling dealer to recover the tax so defaulted.
- Accordingly, denial of ITC of the recipient without initiating any action against the defaulting supplier or establishing collusion between the supplier and recipient is arbitrary.

### SC observations and order [SLP(C) No. 27827-27828; Order dated 14 December 2023]

- The SC affirmed the HC's order and dismissed the appeal of the Department.

### Our comments

This landmark judgement brings considerable relief to the taxpayers grappling with similar mismatch notices and litigation. The matter has been a major source of contention and prolonged litigation, both under the erstwhile regime as well as the GST framework. **However**, the ongoing litigations under GST have resulted in favourable judgements for the assesses.

Earlier, the Kerala HC, in the case of Diya Agencies, had categorically held that ITC cannot be denied solely because the transaction is not reflected in GSTR 2A. Underscoring the injustice, the HC had emphasised that if the taxpayer establishes that tax amount is paid to the seller and ITC is *bonafide* then the same cannot be denied. The SC's decision in the case of Ecom Gill Coffee Trading Private Limited was relied upon wherein it was categorically established that onus of proving the genuineness of the ITC rest upon the purchasing dealer.

On similar grounds, the Kerala HC in Henna Medicals had held that ITC cannot be denied merely based on mismatch between GSTR 2A and 3B.

In the wake of affirmation of the SC, it is highly likely that disputes related to the denial of ITC due to a default by the supplier may find resolution.

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