On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi & Ors.

Challenge to constitutional validity of denial of Input Tax Credit to purchasing dealers due to default of selling dealers under DVAT (Section involved: Section 9(2)(g) of the Delhi Value Added Tax Act, 2004)

Date of Order: October 16, 2017
Case Law No: GIB-DHC-2017-01
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CASE DESCRIPTION / SUMMARY

Facts :
The petitioners, registered dealers under the DVAT Act, claimed Input Tax Credit on purchases supported by valid tax invoices from registered selling dealers. The tax authorities denied ITC on the ground that the selling dealers had not deposited the tax with the Government or had not properly disclosed the transactions. The denial was based on Section 9(2)(g) of the DVAT Act. Petitioners contended that they had complied with all statutory requirements and could not control the conduct of selling dealers.

Court Decision:
The High Court held Section 9(2)(g) unconstitutional to the extent it denies ITC to bona fide purchasing dealers. The Court held that the provision fails to distinguish between genuine purchasers and those involved in fraud or collusion, thereby violating Article 14 of the Constitution. It was held that a purchasing dealer who has taken all reasonable steps, such as verifying registration and obtaining valid tax invoices, cannot be denied ITC due to default of the selling dealer. However, ITC can be denied where fraud, collusion, or lack of genuineness is established.

Cases Referred by Court:
- K.T. Moopil Nair v. State of Kerala
- State of Kerala v. Haji and Haji
- Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar
- Budhan Choudhry v. State of Bihar
- Gheru Lal Bal Chand v. State of Haryana
- Shanti Kiran India Pvt. Ltd. v. Commissioner, Trade and Tax Department

- Rajbala v. State of Haryana
- Binoy Viswam v. Union of India
- Shayara Bano v. Union of India
- Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra
- Jayam & Co. v. Assistant Commissioner

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