

Suncraft Energy Private Limited & Anr. v. Assistant Commissioner, State Tax, Ballygunge Charge & Ors.

forms under GST (Sections involved: Section 16(2) and Section 73 of the West Bengal Goods and Services Tax Act, 2017)

Date of Order: August 2, 2023
Case Law No: GIB-SC-2023-03
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CASE DESCRIPTION / SUMMARY

Facts

The appellant availed Input Tax Credit on purchases made from a supplier and paid the tax amount along with the value of goods/services. The department issued notices alleging mismatch between GSTR-2A and GSTR-3B and non-reflection of supplier invoices in GSTR-1. A demand order under Section 73(10) was passed reversing ITC along with interest and penalty. The writ petition was disposed of directing the appellant to file a statutory appeal, which led to the present intra-court appeal.

Court Decision:

The High Court set aside the demand order and held that reversal of ITC was not justified without first taking action against the selling dealer. The Court held that when the purchasing dealer has fulfilled conditions under Section 16(2), including possession of invoice, receipt of goods/services, and payment of tax, ITC cannot be denied merely due to non-reflection in GSTR forms. It was further held that proceedings against the purchaser can arise only in exceptional circumstances such as fraud, collusion, or where the supplier is non-existent or without assets.

Cases Referred by Court:

- Union of India v. Bharti Airtel Ltd.
- Arise India Limited v. Commissioner of Trade and Taxes, Delhi
- Commissioner of Trade and Taxes v. Arise India Limited (SLP dismissed)

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