The State of Karnataka v. Tallam Apparels

Whether a purchasing dealer can be denied Input Tax Credit (ITC) on the ground that the selling dealer has failed to remit the tax collected to the Government, despite the purchasing dealer having made genuine purchases supported by proper tax invoices an

Date of Order: February 26, 2021
Case Law No: GIB-KHC-2021-04
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CASE DESCRIPTION / SUMMARY

Background

The assessee is a registered dealer under the Karnataka Value Added Tax Act, 2003, engaged in the business of sale of textiles and readymade garments. The assessee purchased goods from registered dealers within the State, paid tax through account payee cheques, and issued tax invoices to buyers as required under Section 29 of the KVAT Act. The Audit Authority, upon audit of the books of accounts, rejected the returns and by order dated December 26, 2014 under Section 39(1) of the Act, disallowed the Input Tax Credit claimed by the assessee for the tax period September 2012 to March 2013, on the ground that certain selling dealers — namely M/s. Taksons, M/s. Jasky Exporters Pvt. Ltd., and M/s. Venus Printers — were suspected to be bogus dealers and had not remitted the tax to the Department.

Facts

The assessee challenged the order of the Audit Authority before the Joint Commissioner of Commercial Taxes (Appeals), who dismissed the appeal by order dated October 30, 2015, upholding the re-assessment and penalty order. The assessee thereafter appealed to the Karnataka Appellate Tribunal (KAT), which by judgment dated August 21, 2017 allowed the appeal, set aside the orders of the authorities below, and restored the ITC claim of the assessee. The State of Karnataka filed the present revision petition before the High Court challenging the order of the KAT. The State contended that the Tribunal failed to appreciate that under the KVAT Act, only tax actually collected and discharged by the selling dealer is eligible to be availed as ITC by the purchasing dealer, and that the assessee failed to prove the genuineness of the transactions and that the selling dealers were not bogus. The assessee, on the other hand, maintained that it had made purchases supported

by proper documentation including account payee cheques reflected in the invoices themselves, thereby fully discharging its burden under Section 71 of the Act, and that it cannot be made responsible for the failure of the selling dealer to remit tax.

Court Observations (Verbatim — Crucial Extracts)

"*From perusal of these documents, it can safely be concluded that the transaction is not a bogus transaction or make believe transaction. Since M/s. Tallam Apparels is not a bogus dealer, as is evident from the documents produced by the assessee, dis-allowing of input tax is incorrect. There cannot be any dispute, that burden is cast on the assessee to establish the transaction to lay a claim for deduction of input tax by production of necessary documents. This Court is of the considered opinion that the assessee has discharged this burden by placing necessary documents referred to supra. The details of the account payee cheques mentioned in the invoice itself demonstrates that the amount is transferred from the assessee to the dealer through the Bank which fact establishes that the transaction is not a bogus transaction.*" — Para 12

"*In the case on hand, if M/s. Tallam Apparels has not remitted the tax to the Department, for which assessee cannot be penalized.*" — Para 13

"*Under the scheme of the Act, there is no power vested in the authority to proceed against the assessee for non-remittance of tax by his purchaser. This aspect of the matter has been rightly considered by the Karnataka Appellate Tribunal in the right perspective.*" — Para 14

Final Verdict

The High Court of Karnataka dismissed the State's revision petition and upheld the order of the Karnataka Appellate Tribunal. It was held that once the assessee had established the genuineness of purchases through proper documentation including account payee cheques, ITC could not be denied merely on the ground that the selling dealer had not remitted tax to the Department, as the assessee cannot be penalized for the default of the selling dealer.

ADDITIONAL FOOTNOTES

Cases Referred by the Court

#	Case Name	Citation
1	Microqual Techno Pvt. Ltd. v. Additional Commissioner of Commercial Taxes	2011 (71) KLJ 10 (DB)
2	Packwell Industries v. State of Karnataka	2012 (73) KLJ 450 (DB)

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