Aastha Enterprises v. State of Bihar & Ors.

Eligibility of ITC under Section 16(1) & 16(2)(a)–(d) where the supplier collected but failed to deposit tax with the Government.

Date of Order: August 18, 2023
Case Law No: GIB-PHC-2023-12
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The dispute arose from denial of ITC claimed on purchases made against tax invoices. The purchasing dealer contended that the purchases were genuine, payments for the goods and tax were made through bank accounts, invoices were available, and movement of goods was established. However, the selling dealer, after collecting the tax component from the purchaser, did not deposit the corresponding tax with the Government. The petitioner argued that recovery should instead be made from the defaulting selling dealer and that denying ITC would result in double taxation.

The State opposed the claim by relying upon Section 16 of the BGST Act, submitting that ITC is subject to the statutory conditions prescribed therein. The Court also noted that the assessment order had not been challenged through the statutory appeal under Section 107 within the prescribed period, but proceeded to examine the substantive ITC issue because it involved interpretation of the statutory provision.

Court Observation

The Court held that the conditions prescribed under **Section 16(2)(a)**, **(b)** **and** **(c)** are cumulative and must be satisfied together. Possession of a tax invoice and proof of receipt/payment of goods are not, by themselves, sufficient for availing ITC. Section 16(2)(c) specifically requires that the tax charged on the supply must have been **actually paid to the Government**, either in cash or through admissible ITC.

The Court relied upon the Supreme Court's decision in *State of Karnataka v. Ecom Gill Coffee Trading Private Limited*, observing that the claimant of ITC bears the statutory burden of establishing the conditions necessary for the credit. It further held that production of invoices, proof of movement of goods and payment through banking channels does not overcome the requirement under Section 16(2)(c) that the tax must actually reach the Government.

The Court rejected the contention that denial of ITC amounted to double taxation. It observed that merely because the purchaser paid the tax component to the supplier, the tax liability to the Government cannot be treated as satisfied unless the supplier actually deposits the tax with the Government. The statutory mechanism available to recover the unpaid tax from the selling dealer does not absolve the purchasing dealer from satisfying the conditions for ITC.

Final Verdict

The Court concluded that the purchasing dealer cannot claim ITC unless the tax collected by the supplier has actually been paid to the Government. Even where the purchaser possesses tax invoices, establishes movement and receipt of goods, and proves payment to the supplier through bank accounts, ITC cannot be allowed in the absence of the supplier's payment of the tax to the Government.

Accordingly, the **writ petition was dismissed**, with the parties directed to bear their respective costs.

Cases Referred by Court

1. **Sri Vinayaga Agencies v. The Assistant Commissioner (CT) & Anr.** — Madras High Court — **29.01.2013**.

2. **D.Y. Beathel Enterprises v. The State Tax Officer (Data Cell)** — Madras High Court — **24.02.2021**.

3. **ALD. Automotive Pvt. Ltd. v. The Commercial Tax Officer & Ors.** — Supreme Court — Civil Appeal Nos. 10412–10413 of 2018.

4. **Godrej & Boyce Mfg. Co. Pvt. Ltd. & Others v. Commissioner of Sales Tax & Others** — Supreme Court — **1992 (3) SCC 624**.

5. **The State of Karnataka v. Ecom Gill Coffee Trading Private Limited** — Supreme Court — **Civil Appeal No. 230 of 2023**.