LGW Industries Limited & Ors. v. Union of India & Ors.

ITC Eligibility from Fake Suppliers and Validity of Section 16(2)(c) CGST/WBGST Act.

Date of Order: December 13, 2021
Case Law No: GIB-CHC-2021-05
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioners challenged notices denying ITC on purchases and demanding penalty and interest. The GST authorities alleged that the suppliers were fake and non-existing, their bank accounts had been opened using fake documents, the petitioners had not verified their genuineness and identity, and the suppliers' registrations had subsequently been cancelled retrospectively covering the relevant transaction period.

The petitioners contended that the transactions were genuine and supported by the required documents. They stated that the suppliers' registrations were shown as valid on the Government portal at the time of the transactions, payments including GST were made through banking channels, and the invoices were reflected on the GST portal in GSTR-2A. They argued that they could not be penalised merely because the suppliers were subsequently found to be fake unless the department established concrete material showing collusion between the purchasers and suppliers.

Court Observation

The Court observed, subject to further verification, that it could not be said that the petitioners had failed to comply with any statutory obligation before entering into the transactions or in verifying the genuineness of the suppliers.

The Court directed that the genuineness of the transactions, actual payment of purchase consideration and GST, timing of the transactions vis-à-vis cancellation of the suppliers' registrations, and compliance with the statutory obligation to verify the identity of the suppliers should be examined. The Court also required consideration of the judgments relied upon by both sides.

Final Verdict

The writ petitions were **disposed of by remanding the matters to the concerned respondents** for fresh consideration of the petitioners' entitlement to ITC. If the documents establish that the purchases were genuine, supported by valid documents and made before cancellation of the suppliers' registrations, the petitioners were to be granted the benefit of ITC.

The authorities were directed to pass a **reasoned and speaking order after giving an effective opportunity of hearing**, considering the judgments relied upon by the petitioners, within **eight weeks** from communication of the order.