D.Y. Beathel Enterprises v. State Tax Officer (Data Cell), Tirunelveli

Reversal of ITC under Sections 16(1) & 16(2) of the TNGST Act where the supplier failed to remit tax to the Government.

Date of Order: February 24, 2021
Case Law No: GIB-MHC-2021-06
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioners were dealers in raw rubber sheets and had purchased goods from registered selling dealers. A substantial portion of the sale consideration, including the tax component, was paid through banking channels. Based on the returns filed by the sellers, the petitioners availed ITC. Subsequently, during inspection, it was found that the selling dealers had not paid the tax to the Government.

Show-cause notices were issued to the petitioners and their replies stated that all amounts payable had already been paid to the sellers and that the sellers ought to be confronted during the enquiry. However, without examining or involving the selling dealers, the entire liability was imposed on the purchasing dealers. The authorities also took the stand that the purchasers had not established that the tax had been remitted to the Government.

Court Observation

The Court noted that **Section 16(2)** requires, among other things, that the recipient receive the goods and that the tax charged in respect of the supply be actually paid to the Government. The Court observed that if the tax had not reached the Government, the liability would eventually have to be borne by either the seller or the buyer. However, in the present matter, the department had not taken recovery action against the selling dealers in respect of the transactions.

The Court found it improper that, after it had emerged that the sellers had collected tax from the purchasing dealers, no strict action had been initiated against them. The Court further held that the sellers ought to have been examined and confronted during the enquiry, particularly because the department had alleged that the goods were not actually received and that ITC had been availed merely on generated invoices.

The Court identified two fundamental flaws in the proceedings: **(a) non-examination of the selling dealer in the enquiry; and (b) non-initiation of recovery action against the selling dealer in the first place.**

Final Verdict

The Court **quashed the impugned orders** and remitted the matters back to the respondent for fresh enquiry. The stage up to receipt of the petitioners' replies was directed to remain intact, but the enquiry was to be conducted afresh.

The Court directed that the selling dealers be examined as witnesses in the fresh enquiry and that, simultaneously, recovery action be initiated against them. The writ petitions were **allowed**, with **no costs**, and the connected miscellaneous petitions were closed.

Cases Referred by Court

1. **Sri Vinayaga Agencies v. The Assistant Commissioner, CT Vadapalani** — Madras High Court — **2013**.