

MONTHLY NEWSLETTER

GST TRACKER

ISSUE: SEPTEMBER 2023

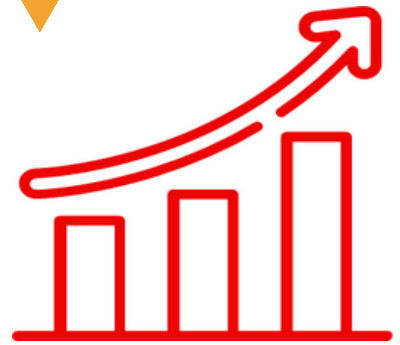


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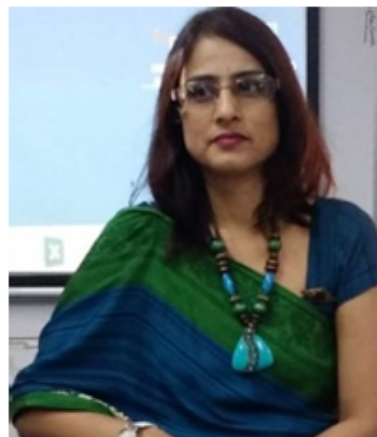
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Case Law Corner



Compiled by CS Payal Kataria

No ITC : Supplier has not deposited/paid GST though recipient has paid GST to the supplier.

Particulars	Details
Name of Petitioner	M/s Aastha Enterprises
Name of Respondent	The State of Bihar
Authority	Patna High Court
Date of Judgement	18.08.2023 (uploading date)
Appeal No.	Civil Writ 10395 of 2023

Brief facts of the case

Petitioner points out that the purchases were made after making payments through bank accounts. Invoices were issued by the selling dealer which is also produced as Annexure-1 series. Annexure-1 series shows the invoice issued by the selling dealer, evidencing the payment of the value of the goods along with the tax, by the purchasing dealer through bank account and the movement of the goods purchased. Obviously, the selling dealer has not paid up the tax liability, to the State, which stood satisfied by the purchasing dealer and collected by the selling dealer. The underlying object of Input Tax Credit regime brought in, is to avoid the cascading effect of tax and this would be totally frustrated if the department officials attempt recovery of tax from the purchasing dealer, which tax liability has already been satisfied by payment of the tax component, to the selling dealer.

Contention of the Petitioner

The recovery now sought has the character of a double taxation and it should be the department who proceeds against the selling dealer to recover the collected amount of tax; which if not paid after collection, entails penalties under the tax enactment. Learned counsel for the petitioner also relied on two decisions of learned Single Judges of the Madras High Court. Sri Vinayaga Agencies v. The Assistant Commissioner (CT) & Anr. in WP Nos. 2036 to 2038 of 2013 dated 29.01.2013 and WP (MD) No. 2127 of 2021 and connected cases; M/s D.Y. Beathel Enterprises v. The State Tax Officer (Data Cell) dated 24.02.2021.

Contention of the Department

The Government Advocate, however, relies on Section 16 of the BGST Act and argues that the Input Tax Credit is tied to certain conditions stipulated under the provision; non-fulfilment of which would result in denial of such credit. On facts it is submitted that the petitioner did not respond to the show cause notice and the reminder served and it was hence there was an ex-parte order passed. Department cited ALD. Automotive Pvt. Ltd. v. The Commercial Tax Officer & Ors. (Civil Appeal Nos. 10412-10413 of 2018) and Godrej & Boyce Mfg. Co. Pvt. Ltd. and Others v. Commissioner of Sales Tax and Others; 1992 (3) SCC 624

Findings & Decision of the Court

The contention of double taxation does not impress us especially since the claim is denied only when the supplier who collected tax from the purchaser fails to pay it to the Government. Taxation as has been held is a compulsory extraction made for the purpose of public good, by the welfare State and without the levy being paid to the Government; there can be no claim raised of the liability to tax having been satisfied and hence there is no question of double taxation.

The mere production of a tax invoice, establishment of the movement of goods and receipt of the same and the consideration having been paid through bank accounts would not enable the Input Tax Credit; unless the credit is available in the ledger account of the purchasing dealer who is an assessee.

Findings & Decision of the Court

The seller and purchaser have an independent contract without the junction of the Government. The statute provides for a levy of tax on goods and services or both, supplied by one to the other which can be collected but the dealer who collects it has also the obligation to pay it up to the State. The statutory levy and the further benefit of Input Tax Credit conferred on the purchasing dealer depends not only upon the collection by the seller but also the due payment by the seller to the Government. When the supplier fails to comply with the statutory requirement, the purchasing dealer cannot, without credit in his account claim Input Tax Credit and the remedy available to the purchasing dealer is only to proceed for recovery against the seller. Even if such recovery from the supplier is effected by the purchasing dealer; the State would be able to recover the tax amount collected and not paid to the exchequer, from the selling dealer since the rigor of the provisions for recovery on failure to pay up, after collecting tax, enables the Government so to do.

.....we have to find that the claim of Input Tax Credit raised by the petitioner cannot be sustained when the supplying/selling dealer has not paid up the amounts to the Government; despite collection of tax from the purchasing dealer.

Petition dismissed.

GSTN Updates & Notifications Corner

GSTN Updates August 2023

Date	Subject
02.08.2023	<u>Advisory on E-Invoice - Services Offered by the Four New IRPs</u>
24.08.2023	<u>ADVISORY: MERA BILL MERA ADHIKAAR SCHEME</u>
28.08.2023	<u>Advisory for applicants where GST Registration application marked for Biometric-based Aadhaar Authentication</u>
31.08.2023	<u>Introducing Electronic Credit Reversal and Reclaimed statement</u>

Source: www.gst.gov.in

Notifications/Circulars/Orders issued in the month of August 2023

Central Tax Notifications August 2023

No.	Date	Subject
36/2023	04.08.2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.
37/2023	04.08.2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.
38/2023	04.08.2023	Seeks to make amendments (Second Amendment ,2023) to the CGST Rules, 2017.
39/2023	17.08.2023	Seeks to amend Notification No. 02/2017-Central Tax dated 19.06.2017
40/2023	17.08.2023	Seeks to appoint common adjudicating authority in respect of show cause notice issued in favour of M/s United Spirits Ltd.
41/2023	25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur
42/2023	25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May, June and July , 2023 for registered persons whose principal place of business is in the State of Manipur

Central Tax Notifications August 2023

No.	Date	Subject
43/2023	25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur
44/2023	25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May, June and July , 2023 for registered persons whose principal place of business is in the State of Manipur

Central Tax (Rate) Notification August 2023

No Central Tax(Rate) Notification was issued in the month of August 2023

Integrated Tax Notification August 2023

No Integrated Tax Notification was issued in the month of August 2023

Integrated Tax (Rate) Notification August 2023

No Integrated Tax (Rate) Notification was issued in the month of August 2023

Circular issued in the month of August 2023

No.	Date	Subject
200/2023	01.08.2023	Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023
201/2023	01.08.2023	Clarifications regarding applicability of GST on certain services

Orders

No order was issued in the month of August 2023

Removal of Difficulty Orders August 2023

No order was issued in the month of August 2023

Source: www.cbic.gov.in

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Business matters

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