

ITC cannot be denied to the recipient solely on the ground that transaction not reflected in GSTR-2A

The Hon'ble Kerala High Court in ***Diya Agencies v. The State Tax Officer [WP(C) No. 29769 of 2023 dated September 12, 2023]*** held that, if the taxpayer is able to prove that tax amount is paid to the seller and the Input Tax Credit claim is bonafide so the Input Tax Credit cannot be denied merely on non-reflection of transaction in GSTR-2A.

Facts:

M/s. Diya Agencies ("**the Petitioner**") claimed the Input Tax Credit (ITC) of INR 44,51,943.08/- for year 2017-18.

The Revenue Department ("**the Respondent**") denied the ITC claim of INR 1,04,376.05/- in respect to invoice not reflected in GSTR-2A.

Aggrieved by the order passed by the Adjudicating Authority the Petitioner filed a writ before the Hon'ble Kerala High Court.

The Petitioner relied upon the judgement of ***Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax [MAT 1218 of 2023 dated August 02, 2023]*** wherein the Hon'ble Calcutta High court held that, before reverting the ITC by the assessee, the Adjudicating Authority should take action against the selling dealer if it is found that he has not deposited the tax paid by the assessee. Unless the collusion between the assessee and the seller dealer is proved, the ITC is not to be denied if the assessee has genuinely paid the tax to the seller dealer.

The Petitioner contended that, it has fulfilled all the conditions stated under Section 16(2) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

The Petitioner further contended that the Central Board of Indirect Tax and Customs (CBIC) had issued press release dated October 18, 2018 clarifying that Form GSTR-2A is the facility to view the details furnished by the supplier in GSTR-1 and cannot impact the ability of the recipient to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the CGST Act.

Issue:

Whether the taxpayer's ITC can be denied solely based on ground that transaction not reflected in GSTR-2A?

Held:

The Hon'ble Kerala High Court in ***WP(C) No. 29769 of 2023*** held as under:

- Observed that, that the Petitioner's claim for ITC has been denied only on the ground that the said amount was not mentioned in the GSTR 2A.
- Noted that, if the supplier has not remitted the said amount paid by the Petitioner to him, the Petitioner cannot be held responsible.
- Directed the Adjudicating Authority to give opportunity to the Petitioner to claim for ITC.
- Considered the CBIC press release dated 18 October 2018 which clarified that GSTR-2A is in the nature of facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis as per Section 16 of the CGST Act.
- Held that, merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the ITC.
- Remanded back to the Adjudicating Authority to give opportunity to the Petitioner to claim for ITC.

Our Comments:

The Kerala High Court in this case underscores the unfairness of denying ITC solely on the basis of non-population of transaction in GSTR-2A. The court recognizes that taxpayers should not be held liable for a condition which is outside the control, such as the non-payment of taxes by the Supplier. The court has instructed the Adjudicating Authority to give taxpayers the chance to furnish evidence in support of their ITC.

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