

## **No ITC to purchasing dealer in the absence of proof of genuine transactions and physical movement of goods**

The Hon'ble Supreme Court in the *State of Karnataka v. M/s. Ecom Gill Coffee Trading Pvt. Ltd. [Civil Appeal No. 230 of 2023 dated March 13, 2023]* has quashed and set aside the order passed by the Hon'ble Karnataka High Court on the grounds that until the purchasing dealer discharges the burden of proof under Section 70 of the Karnataka Value Added Tax Act, 2003 ("**the KVAT Act**"), and proves the genuineness of the transaction/purchase and sale by producing the relevant materials, such as name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc, such purchasing dealer shall not be entitled to Input Tax Credit ("**ITC**"). Restored the order passed by the Revenue Department.

### **Facts:**

M/s. Ecom Gill Coffee Trading Pvt Ltd. ("**the Respondent**") is a purchasing dealer. The Respondent has purchased green coffee beans from other dealers for the purposes of further sale in exports and in the domestic market. The Revenue Department ("**the Appellant**") issued a notice to the Appellant under Section 39 of the KVAT Act upon finding irregularities in Input Tax Rebate claimed for Assessment Year ("**A.Y**") 2010-2011. Subsequently, upon re-assessment, it was found that the Respondent had claimed ITC from 27 sellers, out of which 6 were de-registered, 3 had not filed taxes despite selling to the dealer, and 6 had denied turnover and not paid taxes. As a result, ITC worth INR 10.52 lakhs was disallowed. The Respondent preferred an appeal, but it was rejected by the first Appellate Authority, however the second Appellate Authority allowed the appeal on the grounds that the Respondent purchased the coffee from the registered dealer under genuine tax invoices and consequently allowed the ITC claimed vide its judgment ("**the Impugned Judgement**"). The Hon'ble Karnataka High Court ("**the High Court**"), also dismissed the revision application vide its order ("**the Impugned Order**")

Being aggrieved, this appeal has been filed.

The Appellant contended, that the High Court has materially erred in dismissing the revision application as it did not consider that the burden of proof for claiming ITC is on the purchasing dealers. They must prove the authenticity of the transactions and actual movement of goods as per Section 70 of the KVAT Act. Further contended that, the Respondent is entitled to ITC only if it can prove the actual payment of tax and transfer of goods as the Appellant cannot recover from sellers who are not registered or have filed 'NIL' returns, thereby denying the sale.

The Respondent contended that, it had discharged the burden of proof cast under Section 70 of the KVAT Act. Once the dealer has discharged the burden of proof cast under Section 70 of the KVAT Act, the purchasing dealer is entitled to the ITC and if at all it is found that a tax is not paid by the seller, the same can be recovered from the seller. Further contended that, no other document or any other obligation, which are statutorily required for the purposes of establishing the claim for seeking refund towards ITC are provided as per the KVAT Act and the Rule 27 and Rule 29 of the Karnataka Value Added Tax Rules, 2005 (“**the KVAT Rules**”) and that the Appellant had acted beyond the KVAT Act and the KVAT Rules.

**Issue:**

Whether the second Appellate Authority, as well as the High Court, were justified in allowing the ITC to the Respondent?

## **Held:**

The Hon'ble Supreme Court in ***Civil Appeal No. 230 of 2023*** held as under:

- Analysed Section 70 of the KVAT Act, and noted that the burden of proving that the ITC is correct, lies on the purchasing dealer and merely claiming to be a bona fide purchaser is not enough to discharge this burden. The dealer must provide additional evidence and proof of the actual physical movement of goods.
- Relied on the judgment of ***On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [Writ Petition (Civil) No. 6093/2017 dated October 26, 2017]***, wherein, it was noted that, the ITC can only be claimed on genuine transactions of sale and purchase as per Section 70 of the KVAT Act and the burden is upon the purchasing dealer to prove the same while claiming ITC.
- Stated that, if a dealer produces false documents to support their claim, they are liable for penalties.
- Observed that, concerned purchasing dealers failed to discharge the burden cast upon them as per Section 70 of the KVAT Act.
- Held that, until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, and proves the genuineness of the transaction/purchase and sale by producing the relevant materials, such purchasing dealer shall not be entitled to ITC.
- Further held that, the second Appellate Authority and the High Court have upset the concurrent findings given by the Appellant as well as the first Appellate Authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, is erroneous.
- Stated that, the reliance on Rule 27 and Rule 29 of the KVAT Rules by purchasing dealers is insufficient to prove the actual physical movement of goods, which is required to discharge the burden of proving the genuineness of transactions as per Section 70 of the KVAT Act.

- Further stated that, in the absence of any cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc, the Appellant was justified in denying the ITC, which was confirmed by the first Appellate Authority.
- Held that, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per Section 70 of the KVAT Act.
- Quashed and set aside the Impugned Judgment and the Impugned Order.
- Restored the order passed by the Appellant.

### **Relevant Provisions**

#### **Section 70 of the KVAT Act:**

*(1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.*

*(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:*

*(a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and*

*(b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.*

*(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty*

**(Author can be reached at [info@a2ztaxcorp.com](mailto:info@a2ztaxcorp.com))**

***DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.***