

Petitioner is not liable to pay penalties for the wrongful availment of ITC by the Supplier

The Hon'ble Calcutta High Court in the case of *Fairdeal Metals Ltd. v. Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB) [Writ Petition Application No. 170 of 2024 dated February 01, 2024]*, held that the Petitioner was not responsible for bogus availment of Input Tax Credit (“ITC”) by the Supplier. Therefore, the Petitioner is not liable to pay the penalty.

Facts:

Fairdeal Metals Ltd. (“the Petitioner”) procured goods from M/s Navaraj Trading Company (“the Supplier”). The Supplier was registered recently under the Central Goods and Services Tax Act, 2017 (“the CGST Act”) from October 9, 2023, in the State of Assam. The Supplier had shown the nature of occupancy over the place of business as 'rented' and in support of its claim rent agreement, and the trade license was supplied. No documents like electricity bill, municipal khata copy or any such document to substantiate the legal occupancy of the owner over the place of business was provided as required under the West Bengal Goods and Services Tax Act, 2017 (“the WBGST Act”)/ the CGST Act and the rules made there under.

The Show Cause Notice dated December 31, 2023 (“the Impugned SCN”) was issued to the Petitioner stating that certain discrepancies were found in FORM GSTR-3B of the Supplier for the month of October, 2023 and November, 2023. The Impugned SCN alleged that the goods that were being transported did not have coverage as per their GST registration. The purpose of the Supplier was to circulate the bogus ITC. The goods were observed to be of suspicious origin, and the purchase was merely a 'paper sale' to hide the original Supplier with the intention of evading payment of tax. Therefore, the penalty was calculated, and the Petitioner was directed to show cause within four days as to why the proposed tax and penalty should not be payable, failing which further proceedings would be initiated. The date of appearance was fixed on January, 04 2024. The Supplier paid the ITC in the cash ledger on December 30,

2023. Thereafter, an Order dated January 05, 2024 (“**the Impugned Order**”) was passed, directing the Petitioner to pay penalty, and the Revenue Department (“**the Respondents**”) detained the vehicle and the goods.

Hence, aggrieved by the Impugned Order, the Petitioner filed the present writ petition.

Issue:

Whether Petitioner is liable to pay penalties for the wrongful availment of ITC by the Supplier?

Held:

The Hon’ble Calcutta High Court in ***Writ Petition Application No. 170 of 2024***, held as under:

- Observed that, though there was an allegation of non-existence of the Supplier leading to non-deposit of the ITC. However, the Supplier already deposited the ITC on December 30, 2023, prior to the issuance of the Impugned SCN. This act negated the allegation of intention to evade tax.
- Opined that, after registration has been done and the tax is paid by the Supplier, the allegation made against the Supplier does not stand. The Petitioner is in no way connected with any allegations that have been levelled against the Supplier. Therefore, the Petitioner cannot be made liable to pay the penalty as has been assessed.
- Directed that, the Respondent to immediately take steps to release the vehicle and the goods in favor of the Petitioner. Hence, the Impugned Order imposing penalty was set aside and quashed.

Our Comments:

Section 130 of the CGST Act, talks about “**Confiscation of goods or conveyances and levy of penalty**”. According to Section 130 (1)(iv) of the CGST Act where any person contravenes any

of the provisions of this Act or the rules made thereunder with intent to evade payment of tax then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under Section 122 of the CGST Act.

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