

Tax Invoices, E-way bills, and Goods Receipts are not sufficient proof to avail ITC

The Allahabad High Court in the case of *M/s. Malik Traders v. State of Uttar Pradesh and Ors. [Writ Tax No. 1237 of 2021 dated October 18, 2023]*, dismissed the writ petition and held that, details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, to avail Input Tax Credit (“ITC”). The recipient of purchased goods must provide essential information, including vehicle numbers used for transporting the goods, payment of freight charge, and acknowledgment of receipt, in order to substantiate the genuine physical movement of goods for availment of ITC.

Facts:

M/s. Malik Traders (“**the Petitioner**”) is engaged in the business of purchase and sale of waste materials, plastic scrap, paper scrap, and metal scrap. The Petitioner disclosed the turnover of Rs.34,22,634/- for the period of April 2018 to September 2019 on which ITC of Rs.6,16,074.12/- was availed by the Petitioner. The Petitioner was issued a Show Cause Notice (“**SCN**”) dated January 23, 2019, under Section 74 of the Uttar Pradesh Goods and Services Tax Act, 2017 (“**the UPGST Act**”) on the ground of wrong availment of ITC. The Petitioner submitted a reply against the SCN. However, not satisfied with the response submitted, the Revenue Department (“**the Respondent**”) vide order dated October 04, 2019, demanded tax liability of Rs.6,16,074/- along with a penalty of Rs.6,16,074/-, the total amount being Rs.12,32,148/-. Aggrieved by the Order, the Petitioner filed an appeal before the Respondent, however, the appeal was rejected vide order dated March 6, 2021 (“**the Impugned Order**”).

Aggrieved by the Impugned Order, the Petitioner filed a writ petition before the Hon’ble Allahabad High Court, setting aside of Impugned Order or remanding back the matter to the Respondent for re-consideration of the claim of the Petitioner. The counsel for the Petitioner submitted that, the Petitioner has, in its possession Tax Invoices for the goods/scrap purchased from various parties, and E-Way bills were also generated with respect to the said transaction.

The goods were transported through trucks along with bilties (Consignment Note) and payment of goods was made through RTGS/NEFT.

The counsel for the Petitioner further submitted that, the Petitioner has rightly discharged the tax liability by paying the GST on the bills that were raised by the seller and the seller should have deposited the GST tax which was paid by the Petitioner, with the government and benefit of ITC cannot be denied to the Petitioner on this ground. It was also stated that, if the ITC claimed is recovered from the Petitioner, it would amount to double taxation which is not in the spirit of the GST regime.

The counsel for the Respondent submitted that, ITC can be availed only when the conditions stipulated in Section 16 of the UPGST Act are fulfilled. It was further submitted that, the Petitioner is required to prove beyond any reasonable doubt that the transactions took place and there was actual physical movement of goods. The Petitioner is required to deposit the details such as vehicle numbers that were used for the transportation of goods, payment of freight charges, and acknowledgment of taking delivery to prove the actual physical movement of goods. Merely furnishing details of Tax-Invoice, E-Way bill, and Goods Receipt is not sufficient to prove the genuineness of the transaction beyond reasonable doubt, for availing ITC. Therefore, the benefit of ITC cannot be accorded to the Petitioner.

Issue:

Whether Tax-Invoice, E-Way Bill and Goods Receipt are sufficient to prove the genuineness of the transaction beyond reasonable doubt, to avail ITC?

Held:

The Hon'ble Allahabad High Court in ***Writ Tax No. 1237 of 2021*** held as under:

- Observed that, the scheme of ITC was introduced to avoid cascading effect of tax and to avoid double taxation. As per Section 16(2) of the UPGST Act, the registered dealer

can avail ITC only when the conditions under Section 16 are fulfilled. The proceedings can be initiated against the Petitioner for ITC wrongly availed or utilised by any reason or willful misstatement or suppression of fact.

- Relying upon the judgment of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023 dated March 13, 2023)*** the court noted, the primary burden is upon Petitioner to prove beyond reasonable doubt that the actual transaction and physical movement of goods have taken place. The Petitioner is required to furnish the details of the selling dealer, vehicle number, payment of freight charges, acknowledgment of taking delivery of goods, Tax Invoices and payment particulars, etc. to prove and establish the actual physical movement of the goods. Furnishing details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, for availing ITC.
- Opined that, the facts of the aforementioned case would be applicable in the present case and proceedings have rightly been initiated by the Respondent against the Petitioner.
- Held that, the court is not inclined to interfere with the proceedings initiated by the Respondent, hence the writ petition is dismissed.

(Author can be reached at 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.