

ITC can't be denied to the Recipient if Supplier has not remitted the tax:

Suncraft Energy Pvt Ltd v/s Department

Summary of case: Hon'ble Supreme Court has dismissed the department's Special Leave Petition (SLP) against the Calcutta High Court judgment in the case of Suncraft Energy Pvt. Ltd.

Facts of the case:

- Suncraft Energy Pvt Ltd. (Appellant) has filed an appeal wherein respondent has reversed the Input Tax Credit (ITC) availed by the appellant.
- The appellant has purchased goods and services from the supplier and made the corresponding payment of tax against the same.
- A Scrutiny of the return was made by the tax authorities under section 61 of the CGST Act, 2017 wherein they sent a show cause notice to the appellant asking to explain why they shouldn't require to pay back the excess credit claimed for the FY 2017-18.
- Amount was determined from the difference between GSTR-2A v/s GSTR-3B.
- The appellant has submitted a detailed reply that he has already paid taxes to the supplier and only thereafter claimed ITC on such invoices.

Contention of the Appellant:

- The respondent issued notices for recovery of the input tax credit availed by the appellant without conducting any enquiry on the supplier and without effecting any recovery from the supplier.

- The Appellant has fulfilled all the conditions given under Section 16(2) of CGST Act.
- The appellant paid tax to the supplier and a valid tax invoice has been issued by the supplier for installation and commission services.
- The appellant had made payment to the supplier within the time stipulated under CGST Act.

Contention of the Department:

- It was contended that the supplier has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit as the tax charged in respect of such supply has not been actually paid to the Government.
- However, there is no denial of the fact that the appellant is in possession of a tax invoice and the appellant has received the goods or services or both.
- The reason for denying the ITC is that the detail of the supplier are not reflecting in GSTR 1 of the supplier.

Findings of the Hon'ble High Court of Calcutta:

The Hon'ble High Court held that:

- The Department has not conducted any enquiry on the supplier, particularly when clarification has been issued that the reflecting ITC in GSTR 2A does not impact the ability of the taxpayers to avail the ITC on self-assessment basis.
- Furthermore, there shall not be any automatic reversal of ITC from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, the recovery shall be made from the seller.
- however, reversal of ITC can be made when in exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.
- Therefore, before directing the appellant to reverse the ITC, the Department has intended to take an action against the supplier unless and until the department is able to bring out the exceptional case.
- Hence, the demand raised on appellant is not sustainable.

Decision of Hon'ble Supreme Court:

The esteemed Supreme Court has rejected the department's Special Leave Petition (SLP) challenging the Calcutta High Court's decision in the Suncraft Energy Pvt. Ltd. case. Consequently, the Input Tax Credit (ITC) for the purchasing dealer cannot be denied on the grounds that supplier has not remitted the tax so collected except in exceptional cases , such as the supplier going missing or a situation where it becomes impossible for the department to collect tax from the supplier.

The dismissal of the SLP and the validation of the Calcutta High Court judgment is a significant victory for honest taxpayers.