

GIB/TN/M/S D.Y.BEATHEL/24.02.2021/HC-174

High Court Category : Input Tax Credit

State : Tamil Nadu

Order No.: GIB/TN/M/S D.Y.BEATHEL/24.02.2021/HC-174

Name of Entry :

M/S D.Y.BEATHEL ENTERPRISES

Date : 24-02-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE

In the above case the petitioners' herein are dealers, registered with Nagercoil Assessment Circle 3. The petitioners are traders in Raw Rubber Sheets. According to them, they had purchased goods from Charles (seller) and his wife Shanthi.

The specific case of the petitioners is that a substantial portion of the sale consideration was paid only through banking channels. The payments made by the petitioners to the seller, included the tax component also. Seller are also said to be dealers registered with the very same assessment circle.

Based on the returns filed by the sellers, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that seller, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. There is no doubt that the respondent had issued shows cause notices to the petitioners herein. The petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the seller and therefore, they will have to be necessarily confronted during enquiry.

Unfortunately, without involving the sellers, the impugned orders came to be passed levying the entire liability on the petitioners herein. The said orders are under challenge in these writ petitions.

The respondent has filed a detailed counter affidavit and contended that the impugned orders do not warrant any interference.

The learned Government Advocate would point out that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish

any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners herein. The respondent cannot be faulted for having reversed whatever ITC that was already availed by the petitioners herein.

Decision of Advance Ruling Authority :

DECISION

The assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply - if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

That apart in the enquiry in question, the Person who supplied / sold the goods, ought to have been examined. They should have been confronted. - This is all the more necessary; because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

The matters are remitted back to the file of the respondent - petition allowed by way of remand.