

W.P.A. 7231 of 2022 With W.P.A. 7232 of 2022

High Court Category : ITC

State : Culcutta

Order No.: W.P.A. 7231 of 2022 With W.P.A. 7232 of 2022

Name of Entry :

Sanchita Kundu & Anr. Vs. The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal & Ors.

Date : 21-05-2022

Breif Issue :

Fact & Issues Involved:

- Write petition has been filed by the petitioners being aggrieved by the action of the respondent GST concerned denying the benefit of Input Tax Credit (ITC) by their impugned order dated 27th December 2021 to the petitioner on purchase of the goods in question from the suppliers on the ground that the registration of the suppliers in question has already been canceled with retrospective effect covering the transaction period in question.
- The main contention of the petitioners in these writ petitions is that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as a registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more.
-
- When the names of the suppliers as registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction, petitioners could not be faulted if the suppliers appeared to be fake later on. Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondent's concerned finds on inquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalized unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question.
Petitioners further submit that all the purchasers in question invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

Decision of Advance Ruling Authority :**Decision:**

The Hon'ble Calcutta High Court set aside the impugned orders and remanded the cases of the petitioners to the respondent's officer concerned to consider afresh the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of the genuineness of the transactions in question and the respondent concerned shall also consider whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to the compliance of statutory obligation by the petitioners in the verification of the identity of the suppliers (RTP).

If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration whether facts of the petitioners are similar to the judgments of the Supreme Court and various High Courts and of this Court upon which petitioners intend to rely and if it is found similar to the present case in that event the petitioners shall be given the benefit of input tax credit in question.

These cases of the petitioner shall be disposed of by the respondents concerned in accordance with and in the light of the observation made above and bypassing a reasoned and speaking order after giving the effective opportunity of hearing to the petitioners, within eight weeks from the date of communication of this order.