

WPA No.23512 of 2019

High Court Category : ITC

State : Culcutta

Order No.: WPA No.23512 of 2019

Name of Entry :

LGW Industries Limited & Ors. Vs Union of India & Ors.

Date : 13-12-2021

Breif Issue :

Fact & Issues Involved:

- The petitioners are aggrieved by the notices issued by the respondents in refusing to grant the benefit of input tax credit (ITC) on purchase from the suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.
- Petitioners have also challenged the constitutional validity of section 16(2)(c) of the CGST/WBGST Act.
- The GST authorities contended that on inquiry, they came to know that the suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and nonexisting and the bank accounts opened by those suppliers are on the basis of fake documents and petitioners' claim of benefit of input tax credit are not supported by the relevant documents, and the case of the respondents is also that the petitioners have not verified the genuineness and identity of the aforesaid suppliers who are registered taxable persons (RTP) before entering into any transaction with those suppliers.
- Further grounds in denying the input tax credit benefit to the petitioners by the respondents are that the registration of suppliers in question has already been cancelled with retrospective effect covering the transactions period in question.

Petitioner's reply

- The main contention of the petitioners in these writ petitions are 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 a 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 they 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 respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised 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 purchases 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 Calcutta High Court disposed of the cases by considering the facts as recorded subject to further verification it cannot be said that there was any failure on the part of the petitioners in compliance with any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.
- Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by remanding these cases to the respondents concerned to consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners want to rely in support of their claim of the genuineness of the transactions in question and shall also consider as to whether payments on purchases 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 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 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 the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.