GIB/DL/ON QUEST/26-10-2017/HC-42

High Court Category : Input Tax Credit

State : Delhi

Order No.: GIB/DL/ON QUEST/26-10-2017/HC-42

Name of Entry :
ON QUEST MERCHANDISING INDIA PVT. LTD.

Date : 26-10-2017

Breif Issue :

The Delhi High Court ('HC') in case of Quest Merchandising India Pvt. Ltd v. Government of NCT of Delhi & Ors.1 and batch, including W.P. (c) 2106/2015 filed by Arise India Ltd., quashed demands against Petitioner purchasing dealers. • The Revenue preferred an SLP in case of Arise India Ltd.

For the other matters of the batch, the Revenue pleaded that the purchase transactions were not bona fide unlike in case of Arise India Ltd. and ought to be remitted back to the competent authority.

The decision of the High Court against which the Revenue preferred SLP before the Supreme Court is discussed hereunder.

The appellant, being a registered dealer, availed the ITC of the VAT paid on inputs procured from registered selling dealers. The VAT officer issued a default assessment order invoking Section 9(2)(g) of the DVAT Act.

The issue before the court was whether Section 9(2)(g) of the DVAT Act violates Articles 14 of the Constitution of India.

Section 9 (2) of the DVAT Act sets out the conditions under which ITC would not be allowed. Clauses (a) to (g) specify certain kinds of purchases which would not be eligible for the claim of ITC.

As per *Section 9(2) No tax credit shall be allowed:*

(a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;

(b) for the purchase of non-creditable goods;

(c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;

Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;

(d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act;

(e) for goods purchased from a casual trader;

(f) to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.

(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.

The Delhi HC read down the expression 'dealer or class of dealers' in Section 9(2)(g) of the DVAT Act to not include a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers issuing tax invoices reflecting TIN numbers.

Department relied upon M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra the Bombay High Court was concerned with interpreting Section 48 (5) of the MVAT Act, which reads as under:

"(5) For the removal of doubt it is hereby declared that, in no case the amount of set off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government Treasury except to the extent where purchase tax is payable by the Claimant dealer on the purchase of the said goods effected by him:

Provided that, where tax levied or leviable under this Act or in earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the government treasury for the purposes of this sub-section."

However, Delhi HC observed that Bombay High Court was concerned with a situation where the purchase transactions disclosed by the purchasing dealer did not match the sale transactions disclosed by the selling dealer. In contrast, in the cases before this Court there is no instance where Annexures 2A and 2B have not matched.

Delhi HC further observed that there is no provision in the MVAT Act similar to Section 40A of the DVAT Act. Section 40A of the DVAT Act takes care of a situation where the selling dealer and the purchasing dealer act in collusion with a view to defrauding the Revenue

The fact situation where the transactions disclosed by the purchasing dealer and the selling dealer did not match does not exist in the Delhi Case. Consequently, the Delhi Court did not consider the decision of the Bombay High Court in Mahalaxmi Cotton Ginning Pressing and Oil Industries.

The purchasing dealer is being asked to do the impossible, i.e. to anticipate a selling dealer who will not deposit the tax collected by him with the Government and therefore avoid transacting with such selling dealers.

While denial of ITC could be justified where the purchasing dealer has acted without due diligence, i.e. by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration, provisions denying ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bona fide.

This failure to distinguish bona fide purchasing dealers from those that are not results in Section 9(2)(g) applying equally to both the classes of purchasing dealers. This failure to make a reasonable classification attracts invalidation under Article 14 of the Constitution.

Against the Order of the Delhi HC, the Revenue preferred a SLP which was dismissed by the Supreme Court. The SLP in case of Arise India Ltd preferred by the Revenue was subsequently dismissed by the Supreme Court stating that it was not inclined to interfere with the HC order.