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ITC Cannot Be Denied Solely on the Ground that the Supplier was Subsequently Declared Non-Existent, Without Examining the Documentary Evidence Furnished by the Assessee

The Hon'ble Madras High Court in the case of ***Clear Secured Service Private Limited v. The Assistant Commissioner (ST) [Writ Petition No. 23402 of 2026, order dated July 01, 2026]*** held that the Revenue Department cannot confirm a tax proposal denying Input Tax Credit ("ITC") solely on the ground that the supplier was subsequently declared non-existent, without duly examining the documentary evidence furnished by the assessee. Where the documents produced are found insufficient, the assessee must be afforded an opportunity to furnish additional evidence. Accordingly, the assessment order passed under Section 74 of the CGST Act was set aside and the matter was remanded for fresh adjudication.

Facts:

Clear Secured Service Private Limited (**'the Petitioner'**), a registered person under the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**)/Tamil Nadu Goods and Services Tax Act, 2017 (**"the TNGST Act"**) at Chennai, had availed ITC in respect of supplies received from M/s. Jay Steels (**'the Supplier'**) during the relevant period.

Pursuant to an intimation, the Petitioner filed a reply dated January 27, 2025 enclosing proof of payment (bank statement), copies of tax invoices, e-way bills, ledger extracts and screenshots of Form GSTR-2A and Form GSTR-2B, to substantiate the genuineness of the supplies received from the Supplier. Thereafter, a Show Cause Notice dated February 26, 2025 was issued to the Petitioner calling upon it to show cause as to why the ITC claimed in respect of supplies received from the Supplier should not be reversed, and requiring the Petitioner to submit original tax invoices, e-way bill copies, purchase register, lorry receipt and proof of payment. Pertinently, the Show Cause Notice stated in more than one place that it had been issued under Section 73 of the applicable GST statutes.

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However, the Assistant Commissioner (ST), Porur Assessment Circle (**'the Respondent'**), passed the assessment order dated September 02, 2025 along with the summary order in Form GST DRC-07 dated September 08, 2025 under Section 74 of the CGST/TNGST Act, confirming the tax proposal solely on the ground that the Supplier's registration was cancelled with effect from March 27, 2024, thereby categorising the Supplier as non-existent, without advertng to the documentary evidence placed on record by the Petitioner.

The Respondent contended before the High Court that bill trading activities are carried on by making payments through banking channels and that, in the absence of documents establishing the actual movement of goods, no case was made out to interfere with the order.

Aggrieved by the assessment order, the Petitioner approached the High Court by filing a writ petition under Article 226 of the Constitution of India seeking quashing of the impugned order as arbitrary, without authority of law and passed in violation of the principles of natural justice.

Issue:

Whether the Revenue Department can deny ITC and confirm a tax proposal solely on the ground that the supplier was subsequently declared non-existent, without duly examining the documentary evidence furnished by the assessee to substantiate the genuineness of the supplies?

Held:

The Hon'ble Madras High Court in ***Writ Petition No. 23402 of 2026*** held as under:

- Observed that, the burden of proof in relation to a claim for ITC is statutorily imposed on the person claiming such credit and, to that extent, the Respondent cannot be faulted for calling for proof that the supplies received by the Petitioner were genuine.

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- Noted that, the Petitioner had submitted several documents of relevance in this regard, namely, the bank statement, tax invoices, e-way bills, ledger extracts and the Form GSTR-2A and GSTR-2B returns, to establish the genuineness of the supplies received from the Supplier.
- Held that, the said documents should have been duly considered by the Respondent and, if there was any shortcoming, the Petitioner should have been given an opportunity to submit additional documents.
- Observed that, instead, the tax proposal was confirmed solely on the ground that the Supplier was declared non-existent with effect from March 27, 2024, and such an approach cannot be countenanced, especially considering the fact that the order was issued under Section 74 although the Show Cause Notice stated in more than one place that it had been issued under Section 73.
- Accordingly held that, the impugned order was liable to be set aside and the matter remanded for re-consideration, with a direction to the Respondent to pass a fresh order within a period of three months from the date of receipt of a copy of the order, after providing a reasonable opportunity of hearing to the Petitioner.

Our Comments:

The judgment reiterates the settled principle that a bona fide recipient, who has received supplies against valid tax invoices, made payment (including the tax component) through banking channels and duly reflected the transactions in Form GSTR-2A/2B, cannot be denied ITC merely because the supplier's registration was cancelled at a later point of time, often with retrospective effect. The determinative factor is the position prevailing at the time of the transaction and the genuineness of the underlying supply, and not the subsequent conduct or status of the supplier, over which the recipient has no control. At the same time, the Court has struck a careful balance by acknowledging that, in terms of Section 155 of the CGST Act, the

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burden of proving eligibility to ITC lies on the person claiming such credit. The Revenue is, therefore, entitled to call for proof of genuineness, but it cannot brush aside the evidence actually produced and confirm the demand on a solitary, extraneous ground without affording the assessee an opportunity to cure any perceived deficiency.

A similar view has been consistently taken by various High Courts. The Hon'ble Calcutta High Court in ***Gargo Traders v. Joint Commissioner, Commercial Taxes (State Tax) [W.P.A. No. 1009 of 2022, order dated June 12, 2023]*** held that ITC cannot be denied to a genuine buyer where the supplier's registration was cancelled with retrospective effect after the date of the transaction. In ***LGW Industries Limited v. Union of India [W.P.A. No. 23512 of 2019, order dated December 13, 2021]*** and ***Sanchita Kundu v. Assistant Commissioner of State Tax [W.P.A. No. 7231 of 2022, order dated May 05, 2022]***, the Calcutta High Court held that where the purchases were genuine, supported by valid documents, and were effected before the cancellation of the suppliers' registration, the benefit of ITC cannot be refused. The Hon'ble Madras High Court in ***D.Y. Beathel Enterprises v. State Tax Officer [W.P. (MD) No. 2127 of 2021, order dated February 24, 2021]*** held that where the recipient has paid the tax component to the seller, the Department ought, in the first instance, to proceed against the defaulting seller, and reversal of ITC in the hands of the buyer without examining the seller is impermissible. Further, the Hon'ble Calcutta High Court in ***Suncraft Energy Private Limited v. Assistant Commissioner, State Tax [M.A.T. No. 1218 of 2023, order dated August 02, 2023]*** held that ITC cannot be reversed in the hands of the recipient on account of the supplier's default without first proceeding against the supplier, save in exceptional circumstances such as collusion or where the supplier is missing or has closed its business, and the Department's Special Leave Petition against the said decision was dismissed by the Hon'ble Supreme Court ***[SLP (C) Nos. 27827-27828 of 2023, order dated December 14, 2023]***. Under the erstwhile VAT regime as well, the Hon'ble Delhi High Court in ***On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [W.P. (C) No. 6093 of 2017, order dated October 26, 2017]*** read down Section 9(2)(g) of the DVAT Act so as not to penalise bona fide purchasing dealers for the

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selling dealer's default in depositing tax, and the Special Leave Petition against the said decision was dismissed by the Hon'ble Supreme Court in ***Commissioner of Trade & Taxes, Delhi v. Arise India Limited [SLP (C) No. 36750 of 2017, order dated January 10, 2018]***.

However, a note of caution flows from the decision of the Hon'ble Supreme Court in ***State of Karnataka v. Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023, order dated March 13, 2023]***, rendered in the context of Section 70 of the Karnataka VAT Act, 2003, wherein it was held that the dealer claiming ITC must discharge the burden of proving the actual physical movement of goods and the genuineness of the transaction, and that mere production of invoices and proof of payment through banking channels is not, by itself, sufficient. Details such as vehicle numbers, freight payments, delivery acknowledgements and the like assume critical importance. Read together, the jurisprudence makes it clear that while the taxpayer must maintain a complete and credible documentary trail, the Revenue must, in turn, actually evaluate that trail rather than resting the demand on the supplier's subsequent status alone.

Equally significant is the Court's observation on the jurisdictional defect in the proceedings, namely, that the Show Cause Notice was issued under Section 73 of the CGST Act (cases not involving fraud, wilful misstatement or suppression of facts), whereas the final order was passed under Section 74 of the CGST Act (cases involving fraud, wilful misstatement or suppression of facts to evade tax). The two provisions operate in distinct fields with materially different consequences, including an extended period of limitation, penalty up to 100% of the tax, and loss of the concessional closure options available under Sections 73(5), 73(8) and 73(11) of the CGST Act. An order under Section 74 must be founded on a specific allegation, and establishment, of the ingredients of fraud or suppression in the Show Cause Notice itself, and the adjudicating authority cannot mid-stream convert proceedings initiated under Section 73 into proceedings under Section 74. It may also be noted that for tax periods from FY 2024-25 onwards, the unified Section 74A of the CGST Act, inserted by the Finance (No. 2) Act, 2024,

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governs the determination of tax, making it all the more important that allegations of fraud or suppression are specifically pleaded and proved for invoking the higher penalty track.

Relevant Provisions:

Section 155 of the Central Goods and Services Tax Act, 2017

“155. Burden of proof.-

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.”

Section 16(2)(c) of the Central Goods and Services Tax Act, 2017

“16. Eligibility and conditions for taking input tax credit.-

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;”

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