

TAX INFO

Dated 18/06/2022

Latest update on GST Law: Buyer cannot be penalised on account of the seller being a bogus firm as given by Calcutta High Court.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

Name of Petitioner	Sanchita Kundu
Name of Respondent	The Assistant Commissioner of State Tax
Court	Calcutta High Court
Date of Judgement	05.05.2022
Appeal No.	W.P.A. 7231 of 2022

Brief Facts of the Case Law:

The petitioners was aggrieved by the action of the GST Department denying the benefit of ITC by their impugned order dated 27th December, 2021 to the petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest on the ground that the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.

Contention of the Petitioner:

The transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law. The petitioner with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question. The petitioner could not be faulted if the suppliers appeared to be fake later on. Petitioner 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 petitioner was helpless if at some point of time after the transactions were over, if the GST Department finds on enquiries that the aforesaid suppliers were fake and bogus and on such a basis petitioner could not be penalised unless the GST department establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioner and the aforesaid suppliers in question. All the suppliers in question invoices-wise details were available on the GST portal in form GSTR-2A of the petitioner.

Decision of the Court:

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. The case of the petitioner is similar to the judgements of the Supreme Court and various High Courts and of this Court and in that event the petitioner **shall be given the benefit of input tax credit** in question. The case of the petitioner shall be disposed of by the Department in accordance with and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of being heard to the petitioner.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>