

Can GST-ITC of recipient be denied when Supplier's Registration is cancelled retrospectively

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The video relating to this article can be accessed at: https://youtu.be/HjWkFP_nsyk

The Big question under GST today is whether GST-ITC of the recipient can be denied when supplier's registration is cancelled retrospectively? The issue is no more res-integra now that many Courts have ruled in the matter even under the GST regime. On 12th June 2023, The Hon'ble High Court at Calcutta also held in the matter in the case of M/s GARGO TRADERS Vs THE JOINT COMMISSIONER, COMMERCIAL TAXES (STATE TAX) & ORS. In this article we will analyze the issue in detail.

I. At the inception it has to be examined as to what are the Obligations of the recipient for taking ITC u/s 16(2) of The CGST Act 2017. -

- a) He should have a valid tax invoice – as per Rule 46 and 48 of The CGST Rules 2017
 - aa) From October 2019 – The transaction should appear in the GSTR-2A/2B, subject to certain relaxations u/s 36(4) of The CGST Rules 2017. Post 1.1.22, the ITC is only available when the same is reflecting in the GSTR-2B of The recipient.
- b) He should have received the goods or services
- c) The tax should be paid to the Govt. and can be taken on self-assessment u/s 41. Before 1.10.22, even u/ 41 there was no condition of reversal of ITC when tax was found to not have been paid post-facto by the supplier.
- d) The recipient should file his returns

II. The Issue of retrospective cancellation can be explained by means of the following example –

The Recipient purchases the goods from the supplier on say 12th November 2018. He had followed the following procedure –

1. He had received the material

2. He has the tax invoice
3. The supplier's registration was active on 12th Nov 2018
4. The supplier had filed his GSTR-1 and his GSTR-3B for Nov'18 and the ITC reflected in the GSTR-2A/2B of the recipient
5. The recipient had the transporting documents like e-waybill, transporter's CN and has the weighment slips also in some cases
6. The recipient made payment to the supplier and transporter through bank a/c
7. The recipient filed his GSTR-3B and availed the ITC on this transaction

Now on 13th April 2022 the department cancelled the supplier's registration w.e.f. 01.07.2017 and disallowed the ITC to the recipient on this transaction alleging non-compliance with Sec 16(2)(c)

II. Allegations by the department – On 13th April 2022 the department cancelled the supplier's registration w.e.f. 01.07.2017 and disallowed the ITC to the recipient on this transaction alleging –

1. Supplier had not paid the taxes to the Govt. and taken fake ITC
2. Supplier had taken registration on fake documents
3. Hence there is a non-compliance with Sec 16(2)(c) by the recipient

IV. Court's decision in the case of M/s GARGO TRADERS Vs THE JOINT COMMISSIONER, COMMERCIAL TAXES (STATE TAX) & ORS – If the recipient had complied with the following procedure, ITC would be available. Department should check the compliance with these conditions –

1. Recipient had ensured that supplier was registered on the date of the transaction and filed its GSTR-3B for the month
2. Recipient should have additionally ensured that the supplier had taken the impugned transaction into consideration while filing its GSTR-3B. He may have ensured that by his GSTR-2A/2B auto-population.
3. Recipient should have documents like invoice/ bank payment advise/ e-waybill/ CN, etc
4. It should not be proved that recipient has connived with the supplier to defraud the Govt.
5. Most important – The recipient should have received the Goods/Services and paid for them.

By these it can be proved that recipient had proved the genuineness & identity of the suppliers. They cannot be required to do anything more than the possible (Doctrine of Impossible Performance)

V. Favorable Case Laws relied upon –

1. **M/s. LGW Industries Limited & Ors. –vs- Union of India & Ors.** - 2021-VIL-868-CAL
2. **Balaji Exim –vs- Commissioner, CGST & Ors.** - 2023-VIL-181-DEL
3. **DY Beathel Enterprises – Madras High Court**

BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant & a qualified L.L.M (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairperson – Indirect Tax Core Committee of The Confederation of Indian Industries (CII) - Economic Affairs & Taxation Committee - ER. He is the Chairman of The Ease of Doing Business Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute Of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **GST PLEADING & PRACTISE – AUGUST 2021**
- **COMMENTARY ON UNION BUDGET 2021 – Feb 2021**
- **SECTION-WISE COMPENDIUM ON GST – Oct 2020**
- **INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020**
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON DIRECT TAX VIVAAD SE VISHWAS SCHEME – Feb 2020
- SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.