Eligibility of the Recipient to Claim ITC in case of Mis-Classification by Supplier

Jointly By:

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Background

The right to claim ITC on goods and/ or services received by the Recipient is never disputed both in GST law and erstwhile VAT regimes. However, what should be the correct amount of ITC which can be claimed by the recipient has been a matter of legal debate in both GST law and erstwhile Indirect Taxation regime. Section 155 of CGST Act also state that 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. What is the actual scope of the aforementioned 'burden of proof' is still open to various interpretations.

Judicial Precedent

In this regard, the latest judgment by Hon'ble Madras High Court in the case of **Visteon Automotive Systems Pvt. Ltd. Versus Deputy Commissioner (CT) – IV (Fac)** [W.P.No.32655 of 2015 and M.P.No.1 of 2015, 2020 (2) TMI 403] lays down an important guideline for the recipient to claim the right quantum of ITC.

Facts of the Case : The petitioner had purchased "capital goods" as defined in Section 2(11) of the TNVAT Act, 2006 for manufacturing purpose and availed input tax credit in terms of Section 19(3) of the said Act. As per Entry 25, Part B to the schedule I of the said Act, the "capital goods" are liable to VAT at 4%. However, the dealer who sold the "capital goods" to the petitioner charged VAT at 12.5% and passed on the incidence of such tax to the petitioner. The petitioner therefore availed the tax paid and reflected in the invoice at 12.5%.The respondent has contended that since the "capital goods" were liable to VAT only at 4%, the petitioner was liable to reverse input tax credit in excess of 4% and accordingly the petitioner was required to reverse credit availed equivalent to 8.5% VAT paid in excess by the registered dealer who sold the capital goods to the petitioner.

The Hon'ble Madras HC has observed in its judgment that ;

'It is noticed that under the scheme of the Act, input tax credit can be availed on the strength of the invoice on the tax paid by the registered dealer who sells such capital goods or input. ***As a person availing input tax credit, the petitioner had to merely satisfy that the tax reflected in the invoice was paid by the registered dealer who sold the capital goods to it.***

Even if the registered dealer had deliberately paid tax in excess and passed on the incidence of such tax to the petitioner with a view to liquidate the excess credit of input tax accumulated in their hand, the petitioner cannot be denied of the input tax credit of tax paid and reflected in the invoice.

Under those circumstances, the option available to the commercial tax department would be to recover the amount of tax passed on in excess from the registered dealer who sold such capital goods to the petitioner if it facilitated the petitioner to avail credit of such tax if such tax was otherwise not payable."

Thus, it was held by Madras HC that whether the tax was paid at 4% or 12.5% as the case maybe, is irrelevant as far as the department is concerned as the issue is revenue neutral. There is no reason why credit availed by the petitioner should be disallowed particularly in the light of the fact that intention of the legislature is to reduce the cascading effect of the tax the final product. Hence, the SCN issued by Respondent (department) to Petitioner has been quashed.

Author Comments

The aforesaid judgment finds its relevance in GST Regime also. As per Section 16(1), every registered person shall be entitled to take credit of input tax **charged** on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Further, Section 16(2) of CGST Act specifies the conditions for determining the eligibility of recipient to claim ITC. These include the following;

1. He is in **possession of a tax invoice or debit note issued by a supplier** registered under this Act, or such other tax paying documents as may be prescribed
2. He has **received the goods or services** or both.
3. Subject to the provisions of section 41 or section 43A, 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
4. He has furnished the return under section 39

The above conditions do not anywhere require recipient to determine whether the tax paid by him to the Supplier is charged under the correct rate classification including HSN code. The conditions require recipient to claim ITC if he has received goods and/or services backed by the proper tax paying document including invoice and to ensure that this tax is actually paid by supplier and the same finds mention in the return furnished by supplier.