



## CVO CA UPDATES

### CASE LAW UPDATE

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*M/s Deem Distributors Pvt. Ltd. – 2021 (8) TMI 405  
Hon'ble Telangana High Court  
Pronounced on 3<sup>rd</sup> August 2021*

#### ❖ Summary –

Demand cannot be raised while the investigation is not completed. Section 74(5) does not empower the Proper Officer to raise a demand on the basis of an incomplete investigation.

The Department cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine the amount payable.

#### ❖ Facts –

- Assessee had availed input tax credit on invoices received from certain suppliers to the tune of Rs. 1.52 Crores. A letter dated 25.04.2019 was received from the department wherein it was stated that these suppliers were fictitious and it appears that the assessee has availed the credit without receiving the goods, and hence the ITC should be reversed
- **Investigation in the said case was ongoing** and, in the meanwhile, on 22.01.2021 the assessee received an intimation for payment of Rs. 1.17 Crores, failing which show cause notice under Section 74(1) will be issued.

#### ❖ Taxpayers Argument –

- Demand cannot be determined while the investigation is ongoing. Any demand at best can be a provisional demand and adopting of coercive methods by the Department amounts to violation of Article 14 and 300-A of the Constitution of India.

#### ❖ Department Argument –

- It is admitted that investigation has not yet concluded. Intelligence received is very much actionable and accordingly, summons were issued and statement was recorded.
- **Since investigation is underway, show cause notice is not yet raised and the petitioner was only 'advised' to pay the tax along with interest and penalty under Section 74(5) of CGST Act.**



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#### ❖ Judgement –

- **A conclusion appears to have been drawn on the basis of an incomplete investigation**, that the assessee has availed ITC on fictitious purchases. There is no way that liability can be determined before completion of the investigation / enquiry.
- Section 74(5) allows the assessee to voluntarily pay the tax, if he so chooses, however, it **does not empower the Department to demand tax as if there has been a determination of tax along with interest and liability.**
- In opinion of the court, no tax demand can be issued or raised when investigation is still in progress.
- **The Department cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine, in an enquiry, after putting the petitioner/assessee of notice, such an action is wholly arbitrary and without jurisdiction.**