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### CASE LAW UPDATE

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#### *LGW Industries Ltd V/s Union of India High Court of Calcutta*

***MD. NIZAMUDDIN, J. W.P.A. NOS. 12964, 23512 OF 2019 6768, 6771,  
7285, 8195 OF 2020 AND 8289, 10776 OF 2021, DECEMBER 13, 2021***

#### ❖ Summary –

- LGW Industries Ltd is a buyer of goods from the suppliers whose GST registration is cancelled. The petitioner has purchased the goods before the date of cancellation of supplier's GST registration by making payment for the goods purchased.

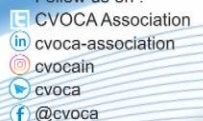
#### ❖ Facts –

- The petitioner LGW Industries Ltd had purchased goods from a supplier. At the time when the purchase was made, the supplier was a Registered Taxable person, however post the transaction the GSTIN registration of the supplier was cancelled.
- Similar facts and question of laws were involved in other writ petitions. The petitioners in those writ petitions were aggrieved by the impugned notices issued by the respondents concerned for not allowing the petitioners who are the purchasers of the goods in the question and refusing to grant the benefit of input tax credit on the purchases made from the supplier and asking to pay penalty and interest under the relevant provision of GST.

#### ❖ Taxpayers Argument –

- The Taxpayer contended that the transactions in the question are genuine and valid and were supported by all the relevant documents required under the law. Further, the taxpayer with their due diligence have verified the genuineness and identity of the suppliers in the 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 the transactions in question and the taxpayer submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so,

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### CASE LAW UPDATE

#### ❖ Taxpayers Argument (Ctd.) –

- when the names of the suppliers as a registered taxable person were already available with the Government record and in the Government portal at the relevant period of transaction, the taxpayer could not be faulted if they appeared to be fake later on.
- Further, the taxpayer submit that they have paid the amount of purchases as well as tax on the same not in cash and all the transactions were through banks and the taxpayer is helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the suppliers were fake and bogus and on that basis the taxpayer purchaser could not be penalised unless the department establish with concrete materials that the transactions in the question were the outcome of any collusion between the supplier and the purchasers in the question.
- Also, the taxpayer submit that the invoice wise purchases were available on the GST Portal in the form GSTR-2A which are the matters of record.

#### ❖ Department`s Argument –

- The Suppliers from whom the purchaser / taxpayer is claiming to have purchased the goods in the question are all fake and non-existing and the bank accounts opened by those suppliers are on the basis of fake documents and petitioner's claim of benefit of input tax credit are not supported by the relevant documents and the case of the respondents / purchaser / taxpayer is also that they have not verified the genuineness and identity of the aforesaid suppliers who are registered taxable person before entering in to any transaction with those suppliers.
- Further grounds of denying the input tax credit benefit to the petitioners by the respondents are that the registration of suppliers in the question has already been cancelled with retrospective effect covering the transactions period in the question.

#### ❖ Judgement –

- Considering the facts as recorded, subject to further verification, it cannot be said that there was a failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transaction in the question or for verification of the genuineness of the suppliers.



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#### ❖ Judgement (Ctd.) –

- The petition are disposed of by remanding the case to the respondents concerned to consider the case afresh on the issue of their entitlement of ITC by considering the documents which the petitioners want to rely in support of the genuineness of the transaction and consider whether the payment of the purchases along with the GST were actually paid or not to the suppliers and also consider whether the transaction were made before the cancellation of registration of the suppliers and consider compliance of statutory obligation by the petitioner in verification of identity of the suppliers.
- If it is found upon considering the relevant documents that all the transactions are genuine and supported by valid documents and if the transactions are made before the date of cancellation of registration, the taxpayer shall be given the benefit of input tax credit.

#### ❖ Author`s Comments –

- Cancellation of registration at a latter date after the transactions are done cannot be considered as a ground for denying input tax credit provided those purchases are supported by valid documents, payments for the same is made to the supplier and invoice wise details are available in the Form GSTR-2A/2B.

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