UNRAVELING LEGAL PRECEDENTS: EXPLORING KEY CASE LAWS SHAPING JURISPRUDENCE

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Suncraft Energy (P.) Ltd. vs. Assistant Commissioner of State Tax – Calcutta High Court - [2023] 153 taxmann.com 81 (Calcutta)

Facts and issue involved

Appellant had claimed ITC in respect of certain invoices which were not reflected in its GSTR-2B because the supplier had not uploaded the same in its GSTR-1 and therefore, had not discharged GST liability on the same. GST Authorities issued notice for recovery of the ITC claimed by the appellant, on the basis of the difference of the amount of ITC in Form GSTR-2A and Form GSTR- 3B, without conducting any enquiry on the supplier.

Discussions by and observations of High Court

For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16 (2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a non-obstante clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless-

(a) he is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both;

(c) 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 utilization of input tax credit admissible in respect of such supply; and

(d) he has furnished the return under Section 39.

Appellant claims that they have fulfilled all the conditions as stipulated under Sub-section (2) of Section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the respondent for installation and commission services and the appellant had made payment to the respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the department erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid at the time of availing the goods/ services. Thus Appellant claims that it has fulfilled all conditions as stipulated under the said section and therefore it should be able to claim ITC on the same.

Appellant placed reliance on decision of the Hon'ble Supreme Court in case of ***Union of India vs. Bharti Airtel Limited*** wherein it was held that:

Form GSTR-2A is only a facilitator.

ITC is to be availed on self-assessment basis as per books of accounts.

Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform.

Press release dated 18.10.2018 clarified that furnishing of outward details in Form GSTR- 1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act.

Further, it has been clarified that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September 2018 is unfounded and the same exercise can be done thereafter also.

Press release dated 04.05.2018 clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

In light of the above, GST Authorities are not justified in directing the appellant to reverse the ITC.

Decision of High Court

It was held that before directing the appellant to reverse the input tax credit and remit the same to the government, the GST Authorities ought to have taken action against the supplier unless they can prove that the buyer was colluding with the supplier or the supplier has closed down his business and such other contingencies.

Against the said order, the Respondent (Revenue) filed a SLP before the Hon'ble Supreme Court and the same has was dismissed by the Apex Court in December 2023.

MOHIT MINERALS PRIVATE LIMITED – SUPREME COURT [2022-TIOL-49-SC-GST-LB]

Facts of the case

In the present case, the respondent, Mohit Mineral Pvt. Ltd., was engaged in the business of importing non-coking coal into the territory of India from foreign countries. Consequent to the import of the goods, the appellant supplied the same to various businesses across India. The nature of the arrangement that the appellant had with the exporters was such that the exporter was liable to bear the freight charges on the goods. This arrangement is called CIF ("Cost-Insurance-Freight") where the exporter pays the freight and insurance charges. On the other hand, in the FOB ("Free-on-Board") system, the importer pays the freight and insurance charges.

Nevertheless, the respondent paid two types of taxes on the value of the freight: the customs according to the Customs Act of 1962 and the applicable IGST on the value of the goods. Before the enforcement of the GST Acts in 2017, the service tax on ocean freight was non-taxable. But through Notification 08/2017 and Notification 10/2017 issued by the Central Government, it was made taxable on a Reverse Charge Basis, meaning the recipient of the service would be liable for the payment of the tax.

While the appellant did not dispute the payment of IGST when the transportation of goods was done on FOB basis, it contended that it was not obliged to pay the IGST on transportation done on CIF basis since both the recipient as well as the supplier were foreign entities. This, they contended, violated Article 5(3) of the IGST Act. Consequently, the respondents challenged the Notifications dated 08/2017 and 10/2017 as being ultra vires.

Discussions by and observations of Supreme Court

The Court stated that the argument made by Revenue that in light of the usage of the expression 'unless the context otherwise requires' in Section 2, makes the ambit larger and accordingly the importer should be treated as recipient in terms of Section 2(93) would be farfetched. The reason for such a conclusion was that such an argument would overlook the context of Section 5(3) which reiterates that the taxable person to be the recipient of service and since the importer was not specifically mentioned as taxable person in the statute, the argument should be required to be set aside. In simple words, as we understand the relevant para of the judgment, it is evident that the Court is trying to find a specific mention of 'importer' as recipient of service in the IGST Act and just because a person is required to pay tax under reverse charge and requires registration cannot be called as recipient of service. Further, the Court observed that the current provision of Section 5(3) delegates the power to notify the good or services that are required to be paid under reverse charge but does not have the power to delegate and specify the person who would be recipient and the same has to be found in the IGST Act. Since, in the instant case, there is nothing in the IGST Act to make the importer as recipient, the arguments of Revenue would have to be struck down but for the provisions of Section 13(9) read with Section 2(93)(c). Any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply, which is found in Section 2(93)(c), when read with Section 13(9), which makes the destination of goods as the place of supply, then it can be inferred that supply of services would have been made to the Indian importer and thus thereby he can be considered as recipient of supply. The Court stated that the conclusion comports with the philosophy of GST to be consumption and destination based tax and accordingly held that since the ultimate benefactor of shipping service is also the importer in India who will finally receive the goods at a destination which is within the taxable territory of India and hence the importer can be called as 'recipient'.

Having concluded all the aspects in favour of the Revenue, the Court then proceeded with the main question as to the composite supply and issues of double taxation.

On Composite Supply and Issues of Double Taxation:

The transaction involves three parties – the foreign exporter, the Indian importer and the shipping line. The first leg of the transaction involves a CIF contract, wherein the foreign exporter sells the goods to the Indian importer and the cost of insurance and freight are the responsibility of the foreign exporter. The second leg of the transaction involves an agreement between the foreign exporter and the shipping line for providing services for transport of goods to India.

On the first leg of the transaction between the foreign exporter and Indian importer, the Indian importer is liable to pay IGST on the transaction value which includes the provision of services such as insurance and freight making it classifiable as 'composite supply' under Section 2(30). Since as per Section 8, the principal supply is to be subjected to tax qua a composite supply and since the principal supply in the instant case would be the goods, the tax would be leviable as if the transaction was one of supply of goods.

The Respondent (Mohit Minerals Private Limited) has contended that the current levy which seeks to impost IGST on the 'service' aspect of transaction would be in violation of principle of composite supply. This is for the reason that the impugned levy is trying to break a part of the composite supply and try to bring the same under the tax net. The Revenue contended that impugned levy is on the second leg of transaction, which is standalone contract between foreign exporter and shipping line and accordingly stated that contract between the foreign exporter and shipping line of which the Indian importer is not a party cannot be deemed to be a part of composite supply.

Decision of Supreme Court

Import of goods on CIF basis is a composite supply of sale of goods, freight and insurance services wherein supply of goods is principal supply. Hence, import of goods on CIF basis is import of goods leviable to IGST under Customs Tariff Act and IGST is not payable on ocean freight services under reverse charge basis.