

Form No. TT/G-1

IN THE WEST BENGAL TAXATION TRIBUNAL

Present :

The Hon'ble : Mr. Justice Malay Marut Banerjee, Chairman
The Hon'ble : Mr. Suranjan Kundu, Judicial Member.
The Hon'ble : Mr. Chanchalmal Bachhawat., Technical Member.

Case No . RN – 979 of 2017

M/s. Samvijay Power & Allied Industries Ltd. .. (Petitioner No.1)

Versus

DCST., Bureau of Investigation, Unit-I & Ors.

Case No. 977 of 2017

M/s. Automate Electro Engineering Co. Ltd...(Petitioner No.2)

Versus

DCST., Bureau of Investigation, Unit-I & Ors.

Case No. 1531 of 2018

M/s. Fiddle Iron & Steel Pvt. Ltd.. (Petitioner No.3)

Versus

JCST, Kolkata (North)

Case No. 253 of 2020

Radha Enterprise & Anr.(Petitioner No. 4)

Versus

STO., Salt Lake Charge & Ors.

Case No. 743 of 2019

M/s. J.J. House Pvt. Ltd. ... (Petitioner No. 5)

Versus

SJCST., Postabazar Charge & Ors.



WEST BENGAL TAXATION TRIBUNAL

Compared with the
original

Date 20/07/21

Signature
Authorized Officer

For Applicants : Mr. S.S. Sengupta, Advocate.
: Mr. A.K. Dugar , Advocate.
: Late Sumit Chakraborty, Advocate

For Respondents : Mrs. M. Sen, State Representative
(on behalf of Mr. A. Chakraborty, State Representative.)

Heard on : 26.02.2021

Judgement on : 26.07.2021

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Deputy Registrar (Judicial)
West Bengal Taxation Tribunal
Bidhannagar, Kolkata-700041

27.07.21

Hon'ble Mr. Suranjan Kundu.,Judicial Member:

(1) The above numbered five cases are heard analogously. The Petitioners of these cases have challenged the constitutionality of section 22(4A)(a) of WB VAT Act. 2003. Section 22(4A)(a) of the Act has been inserted by way of amendment w.e.f 01.04.2015. It reads as follow:

Section 22(4A). The Input Tax Credit or Input Tax rebate in respect of a transaction involving taxable goods shall be available to the purchasing dealer -----

*(a) If the amount of tax is actually paid by the selling dealer in respect of such transactions by way of deposit into appropriate government treasury or by way of including such tax in the total amount of out put tax shown in the relevant return submitted under section 32 by the selling dealer, and upon payment of net tax payable as per return ' and -
....."*

(b) the amount of input tax credit or input tax rebate shall not exceed the amount of tax so paid by the selling dealer in respect of such transaction.

(2) The case of the Petitioners, in brief, is that they, being bona-fide registered purchasing dealers, purchased goods from the registered selling dealers and had claimed for ITC but the revenue dis-allowed their claims on the ground that the selling dealers did not pay tax in respect of corresponding transactions by way of deposit into appropriate government treasury or by way of including such tax in the total amount of out put tax shown, as envisaged under section 22(4A) of the WB VAT Act. The Petitioners have alleged that they have no control on the activities or motives of the selling dealers and they cannot be held responsible nor can they be deprived of their legitimate claim of ITC for non-performance of the statutory duty imposed on the selling dealers. The Petitioners have alleged that the impugned Section has failed to differentiate between bona-fide purchasers and mala-fide sellers and is treating unequals equally and therefore this section is arbitrary, oppressive and violative of Article 14, 21 and 19(1)(g) of the Constitution of India.

(3) The submission on the part of the Respondents in brief, is that the right to claim I.T.C is not an absolute right but merely a conditional right as envisaged in section 22(1) of the Act.

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Deputy Registrar (Judicial)
West Bengal Taxation Tribunal
Bidhannagar, Kolkata-700091 27.07.21

It is argued that the Revenue has been compelled to insert section 22(4A) of the Act by way of amendment in order to curtail huge losses to the State exchequer in some particular cases where purchasing dealers claim ITC on the basis of sell transactions with shadowy selling dealers, most of whom sometimes never exist. It is argued that the purchasing dealers do have sufficient control on the non-performance of the selling dealers regarding payment of taxes and even thereafter, if there is any hardship on the part of the purchasing dealer, the said hardship cannot be a criteria for invalidating a statute.

(4) Before plunging into the discussion let me discuss the fact of the above mentioned cases one by one.

(a) M/s. Samvijoy Power & Alied Industries Ltd. RN- 979/17. This Petitioner has claimed to have made a purchase of Rs. 18,86,94,519/- from one M/s. Mystic Dealtrade Pvt. Ltd. (in short M/s. Mystic) during the period quarter ending 30.06.15 and claimed ITC of Rs. 89,85,453/- against such purchase. The Petitioner, however, has admitted that due to some dispute with Mystic no payment against such purchase has yet been made. It is revealed that Mystic has not filed any return for the concerned period and has not yet paid tax. The Bureau of Investigation then sent a notice u/s. 66(1) of the Act asking the Petitioner to reverse the said ITC as was claimed in its return. The Petitioner has failed to throw any light as to whether Mystic had taken or has ever contemplated to take any legal action against Petitioner for recovery of such huge sum or part thereof though the Petitioner had acknowledged the said amount as liability in its books of accounts.

The further case of this Petitioner is that the ITC Investigation Unit lodged a complaint against the Petitioner before Enforcement Branch of Kolkata Police and an FIR No. 643 was lodged against all the Directors of the Petitioner Company. It is argued on behalf of the Petitioner that since an FIR has already been lodged the revenue by initiating a fresh enquiry on the same matter by sending notice u/s. 66(1) of the Act, made an endeavor to intervene in the sub judice matter. It is argued that it is the duty of the revenue to compel the selling dealer, M/s. Mystic to perform its statutory obligation and to book it if no tax is paid by the offending selling dealer whom the revenue has given the registration after through enquiry. It is alleged that revenue, instead of accusing M/s. Mystic like offending selling dealer, is shifting its burden to the bona-fide purchasing dealer who is being held responsible and is being

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