

### **Recovery Order of ITC due to mis-match in Form GSTR-3B and GSTR-2A stayed**

The Hon'ble Chhattisgarh High Court, in the case of ***Bharat Aluminium Company Ltd vs. Union of India Ors. [WPT No. 94 of 2021 decided on June 24, 2021]*** has granted stay on Recovery Order passed by the Revenue Department, denying Input Tax Credit ("**ITC**") to the Company due to mis-match in two return forms i.e. Form GSTR-2A and Form GSTR-3B, on a condition of deposit of 5% of the demand by the Company.

#### **Facts:**

This writ petition has been filed by Bharat Aluminium Company ("**BALCO**")/"**the Petitioner**") against a notice dated July 1, 2020 and Recovery Order dated January 22, 2021 passed by the Revenue Department ("**the Respondent**") denying ITC to the Petitioner, on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A for the period 2018-19.

The Petitioner has contended that, there shall not be any automatic reversal of ITC of buyer on non-payment of tax by the seller and in case the seller has not paid the tax, a recovery has to be made from the seller. The Petitioner has come out with the purchases made, but did not tally/match with Form GSTR-2A ITC shown by the seller meaning thereby the seller may not have filed return. When the physical verification was offered to be made by the Petitioner it was not accepted.

#### **Issue:**

Whether the ITC was correctly denied to the Petitioner on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A?

#### **Held:**

The Hon'ble Chhattisgarh High Court in ***WPT No. 94 of 2021 decided on June 24, 2021*** held as under:

- Observed that, a perusal of the notice and Recovery Order would show that the issue raised by the Petitioner needs consideration.
- Directed the Respondent not to take any coercive steps pursuant to the Recovery Order passed, on depositing 5% of demand within 15 days by the Petitioner.
- Further directed the Respondent to file a reply within 4 weeks.
- Listed the matter on August 2, 2021.

### **Our Comments:**

Recently, the Hon'ble Madras High Court in ***M/s. D.Y. Beathel Enterprises v. the State Tax Officer [W.P. (MD) Nos. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021 & Ors., dated February 24, 2021]*** had quashed the assessment order passed by the officer levying the entire tax liability on the purchasing dealer without involving the Seller, where the payment of tax has been made, but tax has not been remitted to the government, by the Seller on the ground that Revenue Department had not initiated any proceedings against the sellers in the first place for non-payment of tax.

The Court observed that, the Respondent has not taken any recovery action against the Seller. When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and strict action ought to have been initiated against the Sellers.

It was held that, the omission on the part of the Seller to remit the tax should have been viewed very seriously and strict action ought to have been initiated against them. It was further held that, if there was no movement of the goods, the examination of Sellers became more necessary and imperative. However, the Revenue Department did not ensure the presence of Sellers in the enquiry even when the Petitioners insisted on the same. Hence, the order passed by the Revenue Department suffers from certain fundamental flaws. The Court then condemned the action of Revenue for not confronting the sellers and inaction against them in this regard.

To know more, kindly watch our video on “No relevance of GSTR 2A or 2B for availing GST ITC” by CA Bimal Jain at: <https://www.youtube.com/watch?v=J1AwdviY-LY>

### **Relevant provisions:**

#### **Section 42 of the CGST Act**

*“Matching, reversal and reclaim of input tax credit-*

*42. (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—*

- (a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period;*

- (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and*
- (c) for duplication of claims of input tax credit.*

*(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.*

*(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.*

*(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.*

*(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.*

*(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.*

*(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.*

*(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.*

*(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by*

*crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:*

*Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.*

*(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.”*

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