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INPUT TAX CREDIT – SECTION 16 OF CGST ACT – NON PAYMENT OF TAX BY SUPPLIER

Before denying credit to buyer, catch/enquire the Supplier at first place – Madras High Court

1. Section 16(2)(c) of CGST Act, provides that tax has been actually paid to the Government as condition for claiming Input Tax Credit by buyer.
2. During VAT regime multiple High Courts have held that if seller has not paid the tax, credit cannot be denied to buyer specially where transaction is bonafide.
3. Recently the Hon'ble Madras High Court in the matter of ***D.Y. Beathel Enterprises, 2021-TIOL-890-HC-MAD-GST*** has held as under:
    a. Proposition laid down in the context of the previous tax regime may not be straight-away applicable to the current tax regime.
    b. If the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.
    c. Order demanding reversal of ITC from purchaser must be quashed due to following reasons:
        - Non-examination of Supplier in the enquiry
        - Non-initiation of recovery action against Supplier in the first place

Author's Comment

4. Two important observations are given by the Hon'ble High Court:
    - The Court has not straight-away accepted the proposition laid down by the Courts during VAT regime. Further, the Court after reading Section 16 has held that if the tax is not paid to the Government, that has to be borne by either of the party i.e. seller or buyer.
    - Nonetheless the Court has given relief to the buyer that seller must be examined in such cases and recovery proceedings must be initiated against seller at first place.
5. The relief given in the judgment is one step in favour of genuine buyers.
6. Food for thought : How to enforce this judgment in case of Inter-State transaction where Supplier will be under different jurisdiction of SGST department ?

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