

TAX INFO

Dated 20/12/2021

Latest update on GST Law: Information regarding **If RC of a fraudulent supplier is Cancelled from Retrospective Effect, The ITC Cannot Be Denied To Genuine Buyer If The Buyer Proves The Genuineness Of The Transaction as given in Judgement by Calcutta High Court.**

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Name of Petitioner	LGW Industries Limited
Name of Respondent	Union of India
Court	CalcuttaHigh Court
Date of Judgement	13-12-2021
Appeal No.	Writ Petition No.8289 of 2021

Facts of the Case:

The suppliers from whom the petitioners have purchased the goods are all fake and non-existing and the bank accounts opened by those suppliers are on the basis of fake documents. Grounds of denying the ITC benefit to the petitioners by the Department are that the registration of suppliers in question has already been cancelled with retrospective effect covering the transactions period in question.

Contention of the Petitioner:

The transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and with their due diligence have verified the genuineness of identity of the suppliers in 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 transactions in question. The relevant period of transaction could not be faulted if they appeared to be fake later on. They have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks. Petitioners are helpless if at some point of time after the transactions were over, the suppliers were fake and bogus. Petitioners could not be penalised unless the department establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners and the suppliers in question. Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A. There was no failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.

Decision of the Court:

Case of the petitioners on the issue of their entitlement of benefit of ITC is remanded back for fresh consideration by the Department. The documents which the petitioners want to rely in support of their claim of genuineness of the transactions in question must be considered.

If it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers, in that event the petitioners shall be given the benefit of ITC in question.

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