

**A.F.R.**

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**Court No. - 1**

**SALES/TRADE TAX REVISION No. - 110 of 2023**

**The Commissioner, Commercial Tax**

**vs.**

**S/S Soma Enterprises Ltd.**

**For the Revisionist** : **Mr. Bipin Kumar Pandey,**  
**Additional Chief Standing Counsel**

**Counsel for Respondents** : **Mr. Ved Prakash Singh**

**Hon'ble Shekhar B. Saraf,J.**

1. This is a revision petition filed under Section 58 of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as 'the Act') wherein the following questions of law have been admitted by this Court:-

*"1. Whether on the facts and circumstances of the case the Commercial Tax Tribunal as well as the 1st Appellate Authority was legally justified in dismissing the appeal filed by the department only on the basis of invoices and bank transactions inasmuch as the transactions have not been proved as a bonafide and genuine transactions otherwise establishing the actual transportation of goods?"*

*2. Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in allowing the claim of I.T.C. especially when the finding of fact has been recorded against*

*the dealer and the benefit has been allowed only on the basis of tax invoices and bank transactions?"*

2. The primary issue in the present writ petition is with regard to availment of Input Tax Credit (hereinafter referred to as "the I.T.C.") by the respondent/assessee.

3. Mr. Bipin Kumar Pandey, learned Additional Chief Standing Counsel appearing on behalf of the revisionist, has submitted that the burden of proof is upon the assessee to show the correctness of the claim of the I.T.C. He relies upon Section 16 of the Act to indicate that such burden is upon the assessee specially with matters, which are within the knowledge of the assessee. Section 16 of the Act is delineated below for better reference:-

***"16. Burden of proof***

*In any assessment proceedings where any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act including claim of any amount as input tax credit, shall lie upon him and assessing authority shall presume the absence of such circumstances."*

5. He further relies upon paragraphs 23, 24 and 25 of the Apex Court judgment penned by Justice M.R. Shah in the case of the **State of Karnataka vs. M/s Ecom Gill Coffee Trading Private Limited** reported in **2023 SCC Online SC 248**. The relevant paragraphs of the said judgment are set forth below:-

*"23. Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of*

*ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.*

**24.** *Even considering the intent of section 70 of the Act, 2003, it can be seen that the ITC can be claimed only on the genuine transactions of the sale and purchase and even as per section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them*

*from the concerned dealers and on which the ITC have been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.*

*25. In the present case, the respective purchasing dealer/s has/have produced either the invoices or payment by cheques to claim ITC. The Assessing Officer has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the concerned dealers has been disputed and/or denied by the concerned dealer. In none of the cases, the concerned purchasing dealers have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and therefore it can be said that the concerned purchasing dealers failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit."*

6. The relevant paragraphs of the impugned order of the Tribunal have also been placed before this Court by the learned counsel for the revisionist to indicate the contradictory stand taken by the Tribunal. It is to be noted that in paragraph 16 of the Tribunal's order the Tribunal has indicated that certain persons, who had sold the goods to the assessee were not entitled to issue tax invoice as they were following the compounding scheme. Furthermore, a few of the dealers' registration had been cancelled and in certain cases the dealers have not shown in the return any sale made to the present assessee. However, from perusal of paragraph 18 of the judgment of the Tribunal, it appears that the Tribunal taking note of the fact that these firms have not sold goods to the assessee went on to hold that since payment has been made via RTGS and invoices have been submitted by the assessee, these transactions were genuine and the assessee was rightful in claiming the I.T.C.

7. Counsel on behalf the assessee has vehemently argued that it was the Department that went up in appeal before the Tribunal and could not produce any documents that were detrimental to the assessee. In fact, the Tribunal records the same at paragraph 19 of the judgment. He further submits that the fact of payment having been made by him is undisputed and the fact that invoices were submitted is also undisputed. He submits that there was nothing further for the assessee to show for claiming the I.T.C. He also submits that the assessee was carrying out the work on contract from the Government agency and all these purchases were used in the said work contract and verified by the independent evaluator appointed by the Government.

8. I have heard counsel appearing on behalf of the parties and perused the materials on record.

9. It is clear from the factual matrix that the respondent/assessee made payment and also submitted invoices. However, upon reading the judgment of the Apex Court in the case of **M/s Ecom Gill Coffee Trading Private Limited (supra)**, it is clear that mere production of the invoices or the payment made by cheques/RTGS is not enough to discharge the burden of proof upon the assessee. Upon perusal of Section 17 of the Karnataka Value Added Tax Act, 2003, I find that the nature of burden of proof is *pari materia* to the Uttar Pradesh Value Added Tax, 2008, and accordingly, the judgment of the Apex Court would squarely apply in the present case. In the aforesaid judgment, the Apex Court has further gone on to state that the dealer claiming the I.T.C. has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment of particulars. The aforesaid information would be in addition to tax invoices, particulars of payment etc.

10. In the present case, counsel on behalf of the revisionist has submitted that the documents in relation to the transportation of goods were also provided to the authorities below. However, the same do not find reflection in the order passed by the first appellate authority and the Tribunal. It is also true that the Tribunal has recorded finding that the Department has not been able to show any adverse document against the revisionist. The ratio of the decision of the Tribunal is contrary to the judgment of the Apex Court in **M/s Ecom Gill Coffee Trading Private Limited (supra)** as the Tribunal has granted the I.T.C. merely on the basis of invoices and payment details.

11. In light of the above, I am of the view that the order passed by the Tribunal is required to be quashed and set-aside with a direction to the Tribunal to hear the matter afresh allowing the revisionist to produce documents in relation to the transactions including transportation documents and any other relevant document which the petitioner wishes to place. The Department may also be allowed to adduce further evidence, if it so desires.

12. Accordingly, the order of Tribunal dated May 18, 2023 is quashed and set-aside. The Tribunal to decide the matter afresh as directed above. The entire process should be concluded within a period of six months from date. The questions of law are answered in favour of the Department and against the assessee.

13. The revision petition is, accordingly, allowed.

14. I make it clear that the observations made above with regard to findings of the Tribunal are tentative in nature and the Tribunal shall not be influenced by the same while hearing the matter afresh.

**Order Date :- 29.2.2024**

Rakesh

(Shekhar B. Saraf, J.)