

2023 PLRonline 0003 , Case N0. [414600]

Supreme Court of India

JUSTICE M.R. SHAH , JUSTICE C.T. RAVIKUMAR

The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited

CIVIL APPEAL NO. 230 OF 2023

13.03.2023

Karnataka Value Added Tax Act, 2003 - S.39, S.70 - 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. 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. [Para 9, 10]

Karnataka Value Added Tax Rules, 2005 , Rules 27 and 29 - Submission on behalf of the purchasing dealers that under the provisions of the Rules 2005, more particularly under Rules 27 & 29, the only requirement is to issue the tax invoice and to produce the same and there is no other requirement is concerned, the aforesaid has no substance. Rule 27 cast an obligation on the dealers to issue tax invoice and the particulars of the tax invoice are provided under Rule 29. Merely because the tax invoice as per Rule 27 and Rule 29 might have been produced, that by itself cannot be said to be proving the actual physical movement of the goods, which is required to be proved, as observed hereinabove. Producing the invoices as per Rules 27 and 29 of the Rules 2005 can be said to be proving one of the documents, but not all the documents to discharge the burden to prove the genuineness of the transactions as per section 70 of the KVAT Act, 2003. [Para 13]

Cases referred to:

Paras 3, 4: The State of Karnataka v. M/s Tallam Apparels, Civil Appeal No. 231/2023

Para 6: M/s. Bhagadia Brothers v. Additional Commissioner of Commercial Taxes, STA No. 4 of 2018 dated 29.01.2020

Para 6: Madhav Steel Corporation v. State of Gujarat, Tax Appeal No. 742 of 2013

Para 6: Shreeji Impex v. State of Gujarat, Tax Appeal No. 330 of 2014, 2014 SCC OnLine Guj 8074

Para 7: Corporation Bank v. Saraswati Abharansala, (2009) 19 VST 84 (SC)

Para 7: Additional Commissioner of commercial Taxes Zone - II and Ors. v. M/s. Transworld Star Manjushree, Civil Appeal Nos. 216-217 of 2023 @ SLP (Civil) No. 6337-6338 of 2022

Para 14: Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017, decided on 26.10.2017)

Petitioner Counsel: SHUBHRANSHU PADHI, Respondent Counsel: PAI AMIT

JUDGEMENT**M.R. SHAH, J.**

1. As common question of law and facts arise in this group of appeals and the issue is with respect to interpretation of Section 70 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the 'KVAT Act, 2003'), all these appeals are decided and disposed of together, by this common judgment and order.
2. For the sake of convenience, Civil Appeal No. 231 of 2023 arising from the impugned judgment and order dated 26.02.2021 passed by the High Court of Karnataka at Bengaluru in S.T.R.P. No. 82 of 2018 is treated as the lead matter, as in some matters, the said decision has been relied upon.
3. By the impugned judgment(s) and order(s) passed by the High Court, the High Court has dismissed the revision applications preferred by the revenue - State of Karnataka and as such has allowed the Input Tax Credit (hereinafter referred to as the 'ITC') claimed by the respective purchasing dealers. The impugned judgment(s) and order(s) passed by the High Court are the subject matter of present appeals.

Civil Appeal No. 231/2023 (The State of Karnataka v. M/s Tallam Apparels)

4. The facts leading to the present appeal in nutshell are as under:

That the respondent herein - M/s Tallam Apparels (hereinafter referred to as the 'purchasing dealer') purchased readymade garments from other dealers for the purposes of further sale. The purchasing dealer claimed the ITC on such sale to the extent of Rs. 4,18,818/- . Vide order dated 26.12.2014, the Assessing Officer disallowed the ITC claim for the Assessment Year 2012-2013 on the ground that the dealers from whom M/s Tallam Apparels have purchased the readymade garments have either got their registration cancelled or have filed 'NIL' returns. Thus, the Assessing Officer doubted the sale and the payment of tax on such sale of which the ITC was claimed. An Appeal was filed by the purchasing dealer. The Appellate Authority dismissed the same by holding that the burden under section 70 of the KVAT Act, 2003 has not been discharged. However, the Karnataka Appellate Tribunal reversed the orders passed by the Assessing Officer as well as the first Appellate Authority on the ground that the purchasing dealer should not suffer due to default of seller. The revision application before the High Court has been dismissed by the impugned judgment and order.

4.1. In other cases, the Tribunal as well as the High Court have allowed the ITC in favour of the purchasing dealers solely/mainly on the ground that the sale price was paid to the seller by an account payee cheque and that copies of invoices were produced.

4.2 Insofar as the case of M/s Ecom Gill Coffee Trading Private Limited being Civil Appeal No. 230 of 2023 is concerned, M/s Ecom - purchasing dealer purchased green coffee bean from other dealers for the purposes of further sale in exports and in domestic market. Upon finding some irregularities in Input Tax Rebate claimed by the purchasing dealer for

Assessment Year 2010-2011, the Assessing Officer issued notice under section 39 of the KVAT Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order came to be passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers, six were found to be de-registered; three had effected sales to the respondent but did not file taxes and six have outrightly denied turnover nor paid taxes. Therefore, ITC came to be disallowed to the extent of Rs. 10.52 lacs. The first Appellate Authority confirmed the findings of the Assessing Officer. However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee from the registered dealer under genuine tax invoices and consequently allowed the ITC claimed. The revision application before the High Court has been dismissed, relying upon its earlier decision in the case of M/s Tallam Apparels (supra).

5. Shri Nikhil Goel, learned AAG has appeared on behalf of the State of Karnataka and the respective learned counsel have appeared on behalf of the respective purchasing dealers.

6. Shri Nikhil Goel, learned AAG appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in dismissing the revision applications and confirming the respective orders passed by the Appellate Authorities in allowing the Input Tax Credit in favour of the respective purchasing dealers.

6.1 It is vehemently submitted that the High Court has not properly appreciated that when the Assessing Officer doubted the genuineness of the transactions/sales and when it was found that the sale transactions were only paper transactions and even in some of the cases, the registration of the sellers were cancelled and nothing was on record that any tax was paid by the seller, the purchasing dealers shall not be entitled to the Input Tax Credit.

6.2 It is vehemently submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court ought to have appreciated that as such a duty is cast upon the purchasing dealers to prove the transactions/financial transfers, which in the present case, the purchasing dealers failed to discharge. It is submitted that for the purposes of Section 70 of the KVAT Act, 2003, the burden required to be discharged is slightly higher than showing financial transfers and should show actual movement of goods. It is submitted that mere production of invoices or even payment to the seller by cheque cannot be said to be sufficient and may not be said to discharging the burden to claim Input Tax Credit, to be discharged under Section 70 of the KVAT Act, 2003. It is submitted that actual movement of goods is required to be established and proved, over and above the invoices, payment by cheques and actual payment and even the demand of tax by the seller.

6.3 Shri Goel, learned AAG has heavily relied upon the decision of the Karnataka High Court in the case of M/s. Bhagadia Brothers v. Additional Commissioner of Commercial Taxes, STA No. 4 of 2018 dated 29.01.2020, against which the special leave petition has been dismissed as well as the decision of the Gujarat High Court in the case of Madhav Steel Corporation v. State of Gujarat, Tax Appeal No. 742 of 2013 and other allied tax appeals against which also the special leave petition has been dismissed, however, keeping the question of law open and has also relied upon another decision of the Gujarat High Court in

the case of Shreeji Impex v. State of Gujarat, Tax Appeal No. 330 of 2014, 2014 SCC OnLine Guj 8074, in support of his above submissions.

6.4 It is further submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court has failed to appreciate that the revenue cannot recover from the seller who is not registered or who has filed 'NIL' returns, thereby denying sale. It is further submitted that the High Court has materially erred in observing and holding that once the purchases are made by the purchasing dealer by account payee cheque, the purchasing dealer is deemed to have discharged his burden. It is submitted that the High Court has also materially erred in observing that if the seller of the goods from whom the dealer has purchased does not deposit such tax, the dealer (purchasing dealer) cannot be held liable for that. It is submitted that as such the purchasing dealer is entitled to the Input Tax Credit on the tax paid by the seller and/or on the tax paid. It is submitted that therefore, for the purposes of Input Tax Credit, the purchasing dealer has to prove the actual payment of tax and actual transfer of goods and mere paper transaction is not sufficient.

6.5 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

7. While opposing the present appeals, learned counsel appearing on behalf of the respective assessee/dealers, who claimed the Input Tax Credit have vehemently submitted that in the present case, as such, the purchasing dealers have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 and proved the genuineness of the transactions by producing the genuine invoices and even the payment made through cheques. It is submitted that therefore once the dealer has discharged the burden cast under Section 70 of the KVAT Act, 2003, the purchasing dealer is entitled to the Input Tax Credit and if at all it is found that a tax is not paid by the seller, the same can be recovered from the seller. However, so far as the purchasing dealer is concerned, they are entitled to the ITC, once having discharged the burden under Section 70 of the KVAT Act, 2003.

7.1 It is further submitted by learned counsel appearing on behalf of the respective dealers that in fact they have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 by producing the valid invoices and making the payment online to the supplier. It is submitted that registration of the dealer and online payments were never disputed. It is further submitted that apart from Section 70 of the KVAT Act, 2003, the Karnataka Value Added Tax Rules, 2005, namely Rules 27 and 29 provide for the details and obligations upon the dealer to issue the tax invoice and also the particulars of the tax invoices. It is submitted that neither the KVAT Act nor the Rules provide for any other document or any other obligation, which are statutorily required for the purposes of establishing the claim for seeking refund towards Input Tax Credit.

7.2 It is submitted that therefore the decision of the adjudicating authority was beyond the Act and Rules. It is further submitted by the learned counsel appearing on behalf of the respective assessee / dealers that the only requirement of law, as far as the purchasing dealers wanting to avail the benefit of Input Tax Credit is concerned, is that he has to make sure that the selling dealer is a registered dealer and has issued the tax invoice in

compliance with the requirement of the KVAT Act and the Rules made thereunder. It is submitted that once the purchasing dealer demonstrates that he has complied with such requirement, he cannot be denied the ITC only because the selling dealer fails to discharge his obligation under the KVAT Act.

7.3 It is submitted that in the present case, the respondents are purchasing dealers, who have complied with the requirement of KVAT Act and have ensured that the purchases made by them are in compliance with the requirements of the KVAT Act and Rules for claiming ITC. Reliance is placed on the decision of this Court in the case of Corporation Bank v. Saraswati Abharansala, (2009) 19 VST 84 (SC). It is further submitted that the ITC could be denied where the purchasing dealer has acted without due diligence, i.e., by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration. It is submitted that denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. It is submitted that in the case of The Additional Commissioner of commercial Taxes Zone - II and Ors. v. M/s. Transworld Star Manjushree, Civil Appeal Nos. 216-217 of 2023 @ SLP (Civil) No. 6337-6338 of 2022, both the seller and dealer were registered.

7.4 Making above submissions, it is prayed to dismiss the present appeals.

8. We have heard learned counsel for the respective parties at length.

We have gone through the orders passed by the Assessing Officer and the first Appellate Authority as well as the orders passed by the second Appellate Authority/Tribunal and also the impugned judgment(s) and order(s) passed by the High Court dismissing the revision applications. The respondents herein – all purchasing dealers claimed the Input Tax Credit on the alleged purchases made from the respective dealers. The Assessing Officer, on appreciation of evidence and considering the other material on record, doubted the genuineness of the transactions and the purchases made from the respective dealers and denied the ITC. The findings of fact recorded by the Assessing Officer came to be confirmed by the first Appellate Authority. However, the second Appellate Authority and the High Court have allowed the ITC, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and that in some of the cases they also made the payment through cheques, the Assessing Officer was not justified in denying the ITC. Against the grant of ITC, the State is before this Court.

8.1 Therefore, the short question which is posed for the consideration of this Court is, “whether, in the facts and circumstances of the case, the second Appellate Authority as well as the High Court were justified in allowing the Input Tax Credit?”

9. While considering the aforesaid issue/question, Section 70 of the Karnataka Value Added Tax Act, 2003 is required to be referred to, which reads as under:

“70. Burden of proof.- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.

(2) Where 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 tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:

- (a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and
- (b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.

(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty."

9.1 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.

10. 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.

11. 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.

12. Despite the findings of fact recorded by the Assessing Officer on the genuineness of the transactions, while refusing to allow the ITC, which came to be confirmed by the first Appellate Authority, the second Appellate Authority as well as the High Court have upset the concurrent findings given by the Assessing Officer as well as the first Appellate Authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, as observed hereinabove, is erroneous. As observed hereinabove, over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like 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 including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.

13. Now so far as the reliance placed upon Rules 27 and 29 of the Karnataka Value Added Tax Rules, 2005 and the submission on behalf of the purchasing dealers that under the provisions of the Rules 2005, more particularly under Rules 27 & 29, the only requirement is to issue the tax invoice and to produce the same and there is no other requirement is concerned, the aforesaid has no substance. Rule 27 cast an obligation on the dealers to issue tax invoice and the particulars of the tax invoice are provided under Rule 29. Merely because the tax invoice as per Rule 27 and Rule 29 might have been produced, that by

itself cannot be said to be proving the actual physical movement of the goods, which is required to be proved, as observed hereinabove. Producing the invoices as per Rules 27 and 29 of the Rules 2005 can be said to be proving one of the documents, but not all the documents to discharge the burden to prove the genuineness of the transactions as per section 70 of the KVAT Act, 2003.

14. Now so far as the reliance upon the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017, decided on 26.10.2017), relying upon by the learned counsel appearing on behalf of the purchasing dealers is concerned, at the outset, it is required to be noted that before the Delhi High Court, Section 9(2)(g) of the Delhi Value Added Tax Act was under consideration, which reads as under:

“9(2)(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.” The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC.

15. In view of the above and for the reasons stated above and in absence of any further cogent material like 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 the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed by the High Court and the second Appellate Authority allowing the ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the Assessing Officer denying the ITC to the concerned purchasing dealers, confirmed by the first Appellate Authority are hereby restored.

16. The instant appeals are accordingly allowed. However, there shall be no order as to costs.