

Alternatives to Buyers Against Non Payment By Suppliers

Presently, there has been an issue that in case of default on part of supplier, department are directly taking coercive recovery steps against the recipients without any examination at supplier's end.

Such scenarios/events are briefly set out here under for ease of reference: -

1. Notices to recipients for mismatch between GSTR 2A and GSTR 3B, where suppliers are easily traceable
2. Notices for reversal of credit where supplier being alleged missing
3. During the course of inspection, recipients without any notice are being coerced to reverse the credit and pay tax via DRC
4. In any other cases, wherein the department is asking the company (via Verbal statements or show cause notice or general notice) for the reversal of the credit

Under such cases, suggested course of action would be as under: -

Step1: Based on the aforesaid Madras High Court ruling, recipient may file a detailed reply letter, wherein it should categorically request the authorities to provide details as to what reasonable actions which have been taken including recovery steps have been initiated against the defaulter supplier and under which action of the supplier, the department is casting liability on the recipient when all the conditions which are required for the purpose of availment of credit has been satisfied which includes section 16 of the CGST Act read with CGST rules.

In addition to the above, recipients may argue based on the following grounds

- a. The recipient has legitimately availed the credit in accordance with section 16 of the IGST Act (robust documentation should be maintained in this regard);
- b. In the event that the supplier has failed to deposit the tax collected by him from the recipient, then no automatic reversal of credit can be done. The remedy for the Department would be to proceed against the defaulting seller and to recover such tax and not to deny the legitimate ITC.
- c. Section 43A of the CGST provides procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed. In this regard, it is apposite mention here that section 43A has not been implemented as on date and no prescribed procedure has been laid down in this regard. Thus in absence of prescribed mechanism, legitimate input tax credit cannot be denied;
- d. Section 16 (2) (c) laid down harsh and unreasonable conditions for availing ITC.

Thus denying ITC to a buyer of goods or services for default of the supplier of goods or services would tantamount to shifting the incidence of tax from the supplier to the buyer, over whom it has no control whatsoever is arbitrary and irrational & therefore violative of the Article 14, Article 19(1)(g) and Article 300A of the Constitution of India.

- e. As regard coercive recovery of tax during inspection, recipient may place reliance on the judgment of the Hon'ble Gujarat High Court in the case of M/s. Bhumi Associate vs. Union of India through the Secretary) [TS-60-HC(GUJ)-2021-GST], wherein the High Court has formulated following guidelines to be followed by the department in such cases No recovery in any mode by cheque, cash, epayment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central Goods and Services Tax Act, 2017 under any circumstances. Even if the assessee comes forward to make voluntary

payment by filing Form DRC03, the assessee should be asked/advised to file such Form DRC03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings. If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the aforestated directions, then strict disciplinary action should be initiated against the concerned officer.

Step2 In case of adverse action by the department despite the above letter, then recipient may challenge such inactions of the department by way of invoking writ jurisdiction of the High Court.