

Neutral Citation No. - 2025:AHC:93151

Reserved on 13.05.2025

Delivered on 30.05.2025

Court No. - 10

Case :- WRIT TAX No. - 1330 of 2022

Petitioner :- M/S R.T. Infotech

Respondent :- Additional Commissioner Grade 2 And 2 Others

Counsel for Petitioner :- R.R. Agrawal, Senior Counsel, Suyash Agarwal

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri R.R. Agrawal, learned Senior Counsel assisted by Sri Suyash Agarwal, learned counsel for the petitioner and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of this writ petition, the petitioner has challenged the order dated 24.06.2022 passed by the Additional Commissioner Grade-2 (Appeals), commercial Tax, Meerut/respondent no.1 for the period July, 2017 to March, 2018 and the order dated 22.10.2021 passed by the Deputy Commissioner, State Tax, Sector-4, Meerut/Respondent no.2 for the period July, 2017 to March, 2018.
3. Learned counsel for the petitioner submits that the petitioner is a registered supplier having GSTIN and is authorized user of services of mobile recharge of M/s Bharti Airtel Ltd., Vibhuti Khand, Gomti Nagar, Lucknow for the period of 2017-18. He submits that the petitioner uses services of recharged coupons from M/s Bharti Airtel Ltd., against 7 tax invoices amounting to Rs. 1,58,46,502/- wherein the petitioner claimed ITC of Rs. 28,52,370/-.

4. He further submits that on the bills, the CGST and SGST which were charged to the tune of Rs.14,26,185/- each, was paid. He further submits that on 08.07.2021, notice was issued by the respondent no.2 in form GST ASMT-10 under Section 70 of the Act, intimating discrepancy in the return of the petitioner after scrutiny, to which the petitioner in form of ASMT-11, submitted reply on 20.08.2021, clearly stating therein that the difference of ITC claimed and credit appearing in GSTR-2A is not of the bills of M/s Bharti Airtel Ltd. and the payment has been made on the above seven bills through R.T.G.S. He further submits that the liability of tax has duly been discharged by the petitioner and no inaction on the part of the petitioner and therefore, the petitioner cannot be held responsible, but not being satisfied with the same, the respondent no.2 issued a show cause notice to the petitioner under Section 73 of the Act in GST DRC-01, stating that the ITC has wrongly been claimed as per Section 16 (2) (C) of the Act to which the petitioner has submitted a detailed reply stating that the recovery proceedings may be initiated against the M/s Bharti Airtel Ltd., the seller, rather against the petitioner, but not being satisfied with the same, the State authorities passed an order under Section 73 of the Act whereby directing to deposit the amount of Rs.28,52,370/- and in addition to it, 10% penalty was also imposed as well as on reverse ITC, an interest was also calculated. Against the said order, the petitioner preferred an appeal, which has also been dismissed by the impugned order dated 24.06.2022.
5. Counsel for the petitioner further submits that the petitioner has no control over the seller either to file the return on time or compel the selling dealer to deposit the amount to be paid by the petitioner with government authorities. Therefore, the petitioner cannot left to suffer for fault on the part of the selling dealer.

6. In support of his submission, he has placed reliance upon the judgment of *Assistant Commissioner of State Tax Vs. Suncraft Energy Pvt. Ltd., (2023) 13 Centax 189 (S.C.)*.
7. *Per contra*, learned A.C.S.C. supports the impugned order and submits that once the tax has not been deposited with the government treasury, the benefit of reversal of ITC of the petitioner cannot be said to be bad or illegal. He further submits that Section 16(2) of the GST Act contemplates that the benefit of ITC can be made available only on deposit of amount with the government treasury.
8. Upon hearing the parties, the Court has perused the records.
9. It is not in dispute that the recharge coupons were purchased by the seven bills and CGST and SGST were charged.
10. The record shows that the amount of GST charged over the said tax invoices, were paid through banking channel i.e. by R.T.G.S.
11. The record further shows that for non discharge of their duties by the selling dealer, the proceedings were initiated against the selling dealer as evident from the letter dated 05.09.2022 issued by the Joint Commissioner (Corporate Circle) - II, Commercial Tax, Lucknow, a copy of which has been annexed as *Annexure No.9*, at page no. 73 of the writ petition. The said fact was noticed by the appellate authority but no weightage has been given to the same. It is a matter of common knowledge that under the provision of the GST Act, the purchaser cannot compel the selling dealer to deposit the amount of tax realized from the petitioner with the government treasury.
12. Further, the purchasing dealer can also not compel the selling dealer to file the return within stipulated time and deposit the tax collected. The purchasing dealer cannot be left at the mercy of the selling dealer. When the petitioner has discharged his duties

diligently, it is the onus upon the assessing authority to duly communicate about the said fact i.e. the purchase has been made through tax invoices and payments have been made through banking channel and therefore, the authority ought to have counterpart of the selling dealer have initiated action and action has been taken with the benefit ought to have given to the petitioner.

- 13.* The Hon'ble Apex Court in the case of *Suncraft Energy (supra)* had occasioned to consider that the party who has paid the tax on invoices being raised and non-discharge of duties by the counterpart of the seller, the Court was pleased to remand the matter for making due inquiry from the supplier.
- 14.* Similarly, the Madaras High Court in the case of *D.Y. Beathel Enterprises Vs. State Tax Officer (Data Cell), Tirunelveli, 2022 (58) G.S.T.L. 269 (Mad.)* has taken a view that in absence of non-performance of duty by the supplier, action must be taken against the supplier simultaneously and the purchaser alone shall not be suffered.
- 15.* In view of the above facts as stated, the matter requires re-consideration.
- 16.* Accordingly, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.
- 17.* The writ petition is **allowed**. The matter is remanded to the respondent concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of two months from the date of production of certified copy of this order.

Order Date :- 30. 05.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)