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Demand of ITC And Imposition of Penalty Due To Retrospective Cancellation of Supplier's Registration

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Introduction

Input Tax Credit (ITC) under the Central Goods and Services Tax (CGST) Act, 2017 allows registered persons to reduce the tax they've paid on their purchases (inputs) from the tax they need to pay on their sales (output tax liability). This mechanism is crucial for eliminating the cascading effect of taxes, ensuring that tax is not levied on top of previously paid taxes. Section 16 of the CGST Act, 2017 outlines the eligibility and conditions for claiming ITC, including requirements like possessing a tax invoice, ensuring the supplier has paid the tax and ensuring there is proper supply of goods. Recently genuine purchasers/ tax payers are being issued notices for demand of ITC and proposal of penalty under Section 73/74 read with section 122 of the CGST Act, 2017 merely due to their suppliers registration getting cancelled retrospectively.

Section 29 - Cancellation[or suspension] of registration

"(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:"

2. If any supplier/tax payer violates the conditions specified under Rule 21 of the CGST Rules, 2017, the proper officer under Section 29(2) read with Rule 22 of the CGST Rules, 2017 may cancel the registration of such registered person from such date, including any retrospective date as he may deem fit. In such scenarios a lot of genuine purchasers/ tax payers are being affected due to retrospective cancellation of their suppliers. Even after

uploading all the relevant documents like tax invoice and e-way bills for providing evidence of proper purchase and supply of the goods/services on their GST portal, still they are being issued with show cause notices for demand of ITC and proposal of penalty under Section 73/74 of the CGST Act, 2017. It is a settled law that no damage shall be incurred to the genuine recipient who are able to prove that ITC availed by them was done under complete compliance of Section 16 of the CGST Act, 2017 and that their supplier was very much existent at the time of transaction. The genuine recipient is required to discharge its burden of proof by establishing the genuineness of purchases and actual physical movement of goods from its supplier to the recipient.

Judicial findings on demand of ITC and proposal of penalty on genuine recipients whose suppliers GST registration got cancelled retrospectively.

3. The Hon'ble Apex Court in the case of *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd.* [2023] 4 Centax 223 (S.C.) issue pertaining to Karnataka Value Added Tax Act, 2003 (pre-GST regime), wherein it was held that ITC cannot be availed by the genuine purchaser on mere production of the invoices and the payment made by cheques is not enough for claiming ITC. *The dealer claiming ITC shall have to prove and establish the actual physical movement of goods, genuineness of transactions 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* and mere production of tax invoices would not be sufficient to claim ITC.

4. The Hon'ble Apex Court in a pre-GST regime in the case of *State of Maharashtra v. Suresh Trading Company* [1996] 3 SCALE 536 wherein, the registration of the selling dealer was cancelled on a retrospective date due to which the purchases made by the purchasing dealer became invalid and subsequently deduction claimed by the purchasing dealer was rejected and penalty was imposed on the purchasing dealer. *The Hon'ble Apex court held that whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current.* Hence, quashing and setting aside the impugned order.

5. Recently the Hon'ble High Court of Calcutta in case of *Shyamalmay Paul Versus Assistant Commissioner of State Tax W.P.A. No. 708 of 2025* [(2025) 32 Centax 375 (Cal.)] wherein, the Hon'ble bench set aside and quashed the orders passed by the original as well as the appellat authority which only laid emphasis on the documents with regard to payment of freight charges, toll tax receipt etc. *without making any endeavour to look into the materials available on records with regard to movement of goods and also failed to enquire into as to whether the requirements for availing Input Tax Credit as prescribed in the statute has been complied with or not.*

Conclusion.

A Bonafide purchaser who has rightly availed the ITC in accordance with the conditions mentioned under Section 16(2) of the CGST Act, 2017 cannot be held liable under Section 73/74 ready with Section 122 of the CGST Act, 2017 merely due to retrospective cancellation of their supplier. Penalizing a *bona fide* purchaser and the supplier under section 73/74 of the CGST Act, 2017 for the same offence would also amount to *double jeopardy*. The *bona fide* purchaser claiming ITC by furnishing e-way bill and tax invoice discharges its liability to prove and provide information regarding the actual physical movement of goods and acknowledgement of taking delivery of goods as the e-way bill consists of the following information like the name and address of the selling dealer, details of the vehicle which has delivered the goods and etc and on the other hand the tax invoices along with proof of payment (bank statement) clearly establishes that the supplier was very much existent at the time of transaction, still the Goods and Services Tax, 2017 is still a new and evolving law which still have many discrepancies which needs to be resolved for the easement and betterment of common public.

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