

IMPORTANT GST UPDATES



Issued in case of M/S. Pinster Automotive India Pvt Ltd vs Add. Comm. Of GST & CX, Chennai by Madras High Court
Order No: 8493/2023 | Date: 20-03-2023

Ruling

Madras High Court allows Writ Petition to quash order issued by GST Office & consider the matter afresh for ITC claim citing that no opportunity was granted to the petitioner prior to the passing of the order.

Observations & Findings

The petitioner M/S. Pinster Automotive India Pvt Ltd had received certain supplies from third parties and had paid the entire amount including tax component to them and wishes to claim ITC for the same. However, as per the ADC, GST office, these suppliers are delinquent as their registrations have been cancelled and the tax paid by the petitioner has not been remitted by them to the Department.

It was the stand of the petitioner that they had fulfilled all the conditions stipulated under the Statute and had adduced proof for payment of consideration within a period of 180 days and therefore, they are eligible to ITC. The stand was rejected by the respondent who passed an order-in-original on 27.07.2022.

Section 16 of CGST Act deals with the eligibility and conditions for taking ITC. Sub-section (2) of Section 16 sets out certain mandatory contingencies for continuity of ITC to a registered person. One such condition is that the tax charged in respect of such supply has been actually paid to the Government in cash or through utilisation of ITC, admissible in respect of the said supply. Thus there is a mandate cast upon the petitioner/claimant to ITC to ensure compliance with the provisions as, in the alternative and as a natural consequence of Section 16(2)(c), he would be entitled to ITC. At the same time, no fault can be attributed to the Department in this regard, since third party suppliers had uploaded their invoices in GSTR-1, but no tax had been remitted by them, since GSTR 3B had not filed by them. The petitioner, as a consequence, suffered reversal of ITC, IGST, CGST and SGST.

It may be noted that where the tax liability has been met by way of reversal of ITC and similarly recovery is effected from the supplier as well, this would amount to a double benefit to the revenue. Thus, while the Department may reverse credit in the hands of the purchaser, this has to be a protective move, to be reversed and credit restored if the liability is made good by the supplier. Thus, the substantive liability falls on the supplier and the protective liability upon the purchaser.

In the present case, the petitioner has chosen to seek rectification of order-in-original dated 29.07.2022 based upon the aforesaid decisions. The Court observed that there has been no opportunity granted to the petitioner prior to the passing of impugned order. Hence the order is set aside and the petitioner shall be heard by issue of notice and orders passed on the Section 16I application within a period of four (4) weeks.