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Judgment No.: 172
Dt.:05-09-2024



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Judgment Deals With

The impugned order was set aside which confirmed demand on the ground that the petitioner had availed ITC from “cancelled dealers, return defaulters & tax non-payers” without any findings that suppliers from whom the petitioner had availed supplies had not discharged their tax liability by depositing tax with government either in cash or by availing ITC as per Section 16(2)(c) of CGST Act.

Section/Rule	Section 16/ 73
Authority	Delhi High Court
Case Name	Hanuman Industrial Corporation VS Govt. Of NCT Of Delhi Through Chief Secretary
Dated	31 st July, 2024
Citation	W.P.(C) 10497/2024

Brief facts of the case:

The impugned order dated 20.04.2024 was passed by the Adjudicating Authority under Section 73 of the CGST Act, 2017 whereby the demand was confirmed on account of excess utilisation of the Input Tax Credit (ITC).

The impugned order was passed pursuant to the Show Cause Notice (SCN) dated 24.12.2023. The SCN is the usual template followed by the assessing authorities in various cases. The SCN referred to Section 16(2)(c) of the CGST Act which stipulates that a person shall be entitled to avail the ITC on supply, subject to the condition that the tax charged in respect of such supply has been paid to the Government. It was alleged that the petitioner has availed the ITC from suppliers who had not paid the tax on their outward supplies. The SCN also mentioned the names of 2 suppliers whose registrations were cancelled with retrospective effect.

The petitioner had responded to the SCN stating that the petitioner had received the supplies from the suppliers in question and had paid the entire amount due to them. The said suppliers were duly registered with the GST authorities at the material time and the GST portal reflected that they had paid the taxes on the supplies.

Contention of the Petitioner:

The **impugned order does not consider the reply and has mechanically confirmed the liability** on the ground that the petitioner had availed the ITC from “cancelled dealers, return defaulters & tax non- payers” **without specifying the dealers that had not paid taxes** or had not filed returns at the material time.

There is no finding that the suppliers from whom the petitioner had availed supplies during the material time had not discharged their tax liability by depositing tax with the Government either in cash or by availing ITCs, as set out in Section 16(2)(c) of the CGST Act.

Findings & Decision of the Court:

As apparent from the plain language of Section 16(2)(c) of the CGST Act, the ITC would be available only in respect of such supplies where the tax is actually being paid to the government, either in cash or through utilisation of the ITC admissible in respect of the said supply.

There is **no specific finding in the impugned order** that the suppliers, from whom the petitioner had availed supplies, have not paid the tax in respect of their outward supplies to the petitioner, either in cash or by utilisation of admissible liability.

Thus, **the impugned order was set aside and the matter was remanded back** to the concerned Adjudicating Authority who shall decide afresh after affording the petitioner an opportunity of hearing.