IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2042-2047/2015

THE COMMISSIONER TRADE AND TAX DELHI APPELLANT(S)

VERSUS

M/S SHANTI KIRAN INDIA (P) LTD. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9902/2017

O R D E R

1. **Heard learned counsel for the appellant and perused the record.**

2. **In these appeals the short issue that arose for consideration before the Delhi High Court[1] was whether the benefit of Input Tax Credit (ITC) is available to the registered purchaser dealers (respondents herein) who paid taxes to registered seller dealer(s) in**

Signature Not Verified
Digitally signed by KAVITA PAHUJA
Date: 2021.10.10 13:52:23 IST
Reason:

1 1 High Court

terms of invoice(s) raised by them even though those seller dealers did not deposit the collected tax with the Government.

3. **There is no dispute that on the date of transaction, the seller dealer(s) were registered with the Department. However, after the transaction, the registration of those seller dealer(s) was cancelled, and they defaulted in depositing the tax collected by them from the purchaser dealer(s). The High Court vide impugned judgment and order(s) found respondent(s) *bona fide* purchaser dealer(s) who had paid taxes in good faith to registered seller dealer(s) and, therefore, entitled to the benefit of ITC and, accordingly, allowed the said benefit to them after due verification of invoices.**

4. **A similar issue later arose for consideration before the High Court in O*n Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi and Ors.*, 2017 SCC OnLine**

Delhi 13037 in the context of the provisions of Section 9(2) (g) of Delhi Value Added Tax Act, 2004[2].

5. **Section 9(1) of DVAT Act permits ITC to a registered dealer in respect of turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under Section 7 of the DVAT Act. Sub-section (2) of Section 9 sets out the conditions under which such ITC would not be allowed. Clause (g) of sub-section (2) of Section 9 made ITC benefit available to a purchasing dealer only when the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period. Reading down clause**

2 2 DVAT Act

(g) of sub-section (2) of Section 9, in *On Quest Merchandising India* (supra), the Delhi High Court held:

> **"62. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.**
>
> **63. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act."**

6. **The aforesaid decision of the High Court was challenged before this Court in Special Leave to Appeal (Civil) No.36750 of 2017. The said special leave petition was disposed of without interfering with the order of the High Court.**

7. **In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed.**

8. **Pending application(s), if any, shall stand disposed of.**

……J
[MANOJ MISRA]

……J
[NONGMEIKAPAM KOTISWAR SINGH]

New Delhi
October 9, 2025

ITEM NO.121 COURT NO.15 SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 2042-2047/2015

THE COMMISSIONER TRADE AND TAX DELHI Appellant(s)

VERSUS

M/S SHANTI KIRAN INDIA (P) LTD. Respondent(s)

WITH
C.A. No. 9902/2017 (XIV-A)
FOR ADMISSION and I.R.

Date : 09-10-2025 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) : Mr. N. Venkataraman Ld, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Udai Khanna, Adv.
Ms. V.C. Bharathi, Adv.
Mr. B.K. Satija, Adv.
Mr. Gaurang Bhushan, Adv.

For Respondent(s) :Mr. Varinder Kumar Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. The appeals are dismissed in terms of the signed order which is placed on the file.

2. Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA) (CHETNA BALOONI)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)