

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE MS. RITU BAHRI

AND

HON'BLE SRI JUSTICE RAKESH THAPILYAL

SPECIAL APPEAL NO.100 OF 2024

Subhash Singh

.....Appellant

Versus

Deputy Commissioner, State Goods and Service Tax

....Respondent

Counsel for the appellant : Mr. Rohit Arora, learned counsel
Counsel for the State : Ms. Puja Banga, learned standing
counsel

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Ms. Ritu Bahri)

Notice of motion.

2. Ms. Puja Banga, learned Standing Counsel, accepts notice on behalf of the State.

3. The appellant in the present case is engaged in retail and wholesale business of iron scrap and waste with its principal place of business, District Udham Singh Nagar, Uttarakhand. A copy of the registration of the appellant is Annexure no.11.

4. The appellant had purchased goods with proper invoices, and made proper payments through banking channels along with applicable GST. The details of the invoices and the payment of the GST have been recorded in his books of accounts. The supplier of the appellant M/s Dev Bhoomi Spat had received GST from the appellant when they had supplied their goods to the appellant's company, and the appellant in this backdrop had rightly availed the input tax credit for the tax period April 2021 to March 2022. He had paid GST and it was reflected in invoices and E-way bills. If the appellant's suppliers committed a default, can the purchasing dealer be made to bear the consequences of denying the ITC.

5. The short question for consideration in the present special appeal is that the appellant had purchased the goods from the suppliers through proper invoices, and has made proper payments through banking channel along with applicable GST. If the suppliers have not filed their returns, then proceedings under section 74 of the Goods and

Service Tax, 2017, cannot be initiated against the appellant for availing the benefit of ITC in a fraudulent manner. Learned counsel for the appellant further stated that demand of Rs.79,41,598/- was raised by the respondent vide intimation dated 30.01.2023, which was decreased to Rs.46,84,278/- in a show cause notice dated 17.03.2023, and further decrease to Rs.19,47,801/- in the impugned order dated 22.06.2023

6. A short point for consideration in the present special appeal is that the appellant is the supplier, and he has neither paid the tax nor has filed the returns. However, the invoices of sale made to the suppliers are with the appellant, and on the basis of the invoices the payments were made. This is his main ground of the appeal.

7. Keeping in view the provisions of section 107 (6) (d) of the Uttarakhand Goods and Services Tax Act 2017, the order dated 07.03.2024, Annexure no.SA1, of the appeal, is being modified that since the

appellant has produced all the invoices from the suppliers, and it was the duty of the suppliers to further file their returns, which they have not done, the order is being modified that appellant will deposit 10% of the amount, which is being demanded by the respondents.

8. The order is modified, and the appeal is disposed of.

(RITU BAHRI , C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 03rd May, 2024

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