

DISTRICT: North 24 Parganas

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. NO. (W) OF 2019

In the matter of :

An application under Article 226 of the

Constitution of India;

A N D

In the matter of:

1) M/s LGW Industries Limited,

having its principal place of

business at Tower-1, 1803, G-2,

Block-GP, P S Srijan Corporate

Park, Sector-V, Salt Lake City,

Kolkata, North 24 Parganas,

Kolkata- 700091.

2) Bharat Gupta, son of Abhay

Kumar Gupta, Managing Director

and Shareholder having his office

² at **Sector V, Salt Lake** City,

Saltlake, **Kolkata** East, North 24

Parganas. North 24 Parganas, Kolkata –

700091.

...Petitioners

Versus

1. Union of India, through the

Secretary, Ministry of Finance,

Department of Revenue, Government

of India, having its office at Central

Secretariat, North Block, New Delhi-

110001.

2. Assistant Commissioner State

Tax, ITC Investigation Unit, Office of

the CCT, West Bengal, 14- Beliaghata

Road, Kolkata – 700 015;

3. Commissioner State Tax, West

Bengal, 14- Beliaghata Road, Kolkata

– 700 015;

4. The State of West Bengal through

the Chief Secretary, Finance

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Department, Nabanna, Howrah -

711102.

...Respondents

To,

The Hon'ble Thottathil B. Nair Radhakrishnan And His Companion

Justices of the said Hon'ble Court.

The humble Petition of the

Petitioner above named;

Most Respectfully Sheweth:-

1. The Petitioner in the present writ petition under Article 226 of the Constitution of India, 1950 is challenging the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and Section 16(2)(c) of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as WBGST Act) which seeks to deny Input Tax Credit (hereinafter referred to as ITC) to a buyer of goods or services if the tax charged in respect of supply of goods or services has not been actually paid to the Government by the supplier of goods or services. The petitioner is also challenging the demand of reversal of ITC along with interest only on the

basis of allegation that registration under the CGST Act/WBGST

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Act has been obtained by some of the supplier of goods on the basis of fake identity proofs and that none of the supplier is found in their Principal Place of business. The petitioner further prays for the quashing of entire proceeding as show notice has not been issued in the prescribed format as mandated in the CGST Act/WBGST Act. There is also violation of principles of natural justice in terms of ignoring the reply filed in response to the notice asking for reversal of ITC.

2. The brief facts leading to the filing of the present Petition are stated as under:-

2.1 The Petitioner no. 1 is a company incorporated under the Companies Act, 1956 having its registered office at Tower-1, 1803, G-2, Block-GP, P S Srijan Corporate Park, Sector-V, Salt Lake City, Kolkata, North 24 Parganas.

2.2 The Petitioner no. 2 is a citizen of India and shareholder and director of the Petitioner no. 1 company. In the instant case, by reasons of the wrongful and illegal actions of the Respondents, the rights of the Petitioner No. 2 to carry on business and/or hold property through the agency and/or instrumentality of the Petitioner No. 1 Company, has been seriously prejudiced and adversely affected.

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2.3 The Petitioners state that the cause of action in the instant case has arisen within the territorial jurisdiction of this Hon'ble Court.

2.4 The Petitioners state that Petitioner No. 1 Company is registered under the CGST Act and WBGST Act, vide registration bearing no. 19AAACL4610L1ZH.

2.5 The Petitioner No. 1 is merchant exporter of jewellery,

footwear, cosmetics, engineering goods etc.

2.6 The Petitioners state that petitioner no. 1 received a notice

vide memo no. 1021CT/11U dated 28.08.19 for producing

legally acceptable documents to explain as to why the ITC

amounting to Rs. 1,17,83,716.62 along with the interest

payable u/s 50 the GST Acts, 2017 at the rate of 24% and a

penalty equivalent to the tax as specified should not be

reversed/paid by it. It was alleged in the notice that petitioner

no 1 has claimed inward supply of goods from several

Registered Taxable Persons (hereinafter referred to as RTPs)

and availed the ITC thereon during the period August, 2017 to

March, 2018. It was further alleged that the above mentioned

RTPs have obtained registration under the GST Act, 2017

using bank accounts which were opened by using different

combinations of the names of five persons with fake identity

proofs (Fabricated Copy Driving Licenses). It was further

observed that:

- That none of the RTPs is found in the Principal Place of business as mentioned in the respective ARNs for online applications for registration under the Acts;
- That none of the uploaded address proofs submitted with the respective ARNs for online applications for registration under the Acts appears to be scanned from the documents containing original signature of the respective legal owner of the claimed premises.
- That in cases of M/s Corandum Impex Private Limited (19AAGCC8480M1ZY), copies of No objection certificates are used as proof of principal place business but neither the No Objection Certificates are made on stamp papers nor the claimed owners is available at the said premises or any identity proof of the owner is mentioned in the No Objections Certificates.
- That in case M/s Winspree Traders Private Limited (19AABCW8803F1Z7) & M/s Vajrin Marketing Private Limited

(19AAFCV5980N1ZF), the absolute owners of the premises mentioned in the uploaded copies of the rent agreements for principal place of business of the respective RTPs are found to be false.

- That in case of M/s Dela Merchants Private Limited

(19AAFCV5980N1ZF), the absolute owner(s) of the said premises mentioned in the uploaded copies of the rent agreements for principal place of business of the RTP denied any such rent agreement to have been made with the RTP.

It was further observed that the aforementioned findings clearly indicate to the fact that in contravention section 16(2) the GST Acts, 2017, the petitioner no. 1 has made claim of ineligible ITC on purchase from a supplier who is reportedly a functionally non-existent persons (since inception) and is indulged in issuing fake invoices with intent to generate fake ITC. A copy of the notice is annexed hereto and marked as

Annexure “P-1”.

2.7. The Petitioners further state that authorized representative of the petitioner no. 1 appeared on 12.09.2019 and prayed for an adjournment of hearing to 19.09.2019. A copy of the letter is annexed hereto and marked as Annexure “P-2”.

2.8. The Petitioners further state that authorized representative of the petitioner no. 1 appeared on 19.09.2019 and prayed for an adjournment of hearing to 24.09.2019. A copy of the letter is annexed hereto and marked as Annexure “P-3”.

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2.9. The Petitioners further state that petitioner no. 1 send an email to the official email address of respondent no. 2 on 24.09.2019 wherein it was stated that in response to the notice no. 1021CT/11U dated 28.08.2019, petitioner no. 1 has paid ITC amount of Rs. 1,17,83,716/- through DRC 03 vide reference no. DI1909190251809. It was also requested in

the email to fix up another date for hearing. A copy of the email is annexed hereto and marked as Annexure “P-4”.

2.10. The Petitioners further state that petitioner no. 1 received an email from the official email address of respondent no. 2 on 25.09.2019 to fix the next date of hearing on 18.10.2019. A copy of the email is annexed hereto and marked as Annexure “P-5”.

2.11. The Petitioners further state that authorized representative of the petitioner no. 1 appeared on 18.10.2019 and submitted a detailed reply to the notice. A copy of the reply is annexed hereto and marked as “Annexure P-6”.

2.12. The Petitioners further state that it received a memo no. 1213CT/11U dated 11.11.19, wherein reply dated 18.10.2019 filed by the petitioner no. 1 was not considered on the ground that “communication dated 18.10.2019 having mentioned sub

as a 'Notice for explanation against reversal of ITC of Rs. 1,17,83,176.62/- for contravention of Section 16 during the FY 2017-18' and mentioned yourself as 'noticee' is not pertinent to the undersigned or the purposes of the hearing scheduled on 18.10.2019. The memo further refer to a case ID : AD1908190050508 which has never been communicated to us. A copy of the memo is annexed hereto and marked as "Annexure P-7".

2.13. The Petitioners further state that it is flummoxed by the inexplicable reason given by the respondent no 2 to ignore the reply filed in response to the notice. The aforesaid memo further directs us to discharge liability towards accrued payable interest to the government as per the provision of the Acts for enjoying excess ITC for above mentioned respective days and appear before the respondent no. 2 at his chamber with evidence of discharging such liability on or before 29.11.2019 at 2 p.m. It is further directed that our failure to

respond within the scheduled date & time would lead to legal action as may be initiated against petitioner no. 1, as per the provisions of the law without further reference to it.

2.14. The Petitioners further state that it submitted a letter dated

22nd November, 2019 requesting to allow time upto

28.12.2019 to file its reply. A copy of the letter is annexed

hereto and marked as “Annexure P-8”.

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2.15. The Petitioners further state that it has availed ITC on the

basis of legally valid Tax Invoice cum Challan issued by all the

aforesaid suppliers. A copy of the all the invoices cum challan

are annexed hereto and marked as “Annexure P-9”.

2.16. The Petitioners further state that all the purchases have been

reflected in the Form GSTR-2A of the petitioner no. 1 which

provides details of auto drafted inward supplies in the GSTN

Portal. Form GSTR 2A is automatically generated by the GSTN

portal on the basis of supplier's GSTR-1 return. The petitioner

no. 1 has taken ITC after matching its purchases with GSTR

2A automatically generated by the GST portal. A copy of the entire auto generated form GSTR 2As are annexed hereto and marked as “Annexure P-10”.

2.17. The Petitioners further state that payment to all the suppliers have been made through normal banking channels. A copy of the ledger and bank statement corroborating the same is annexed hereto and marked as “Annexure P-11”.

2.18. The Petitioners further state that petitioner no. 1 has exported all the goods purchased by it. A reconciliation of all its purchases and exports and documents evidencing the same are annexed hereto and collectively marked as “Annexure P-12”.

2.19. The Petitioners further state that petitioner no. 1 had taken all reasonable steps to ensure that suppliers of goods are not fictitious by verifying their registration details on the GSTN

portal and also matching its purchases with the GSTR 2A automatically generated by the GSTN portal.

2.20. The Petitioners further state that registration certificates of all the suppliers of goods were valid at the time of purchase and petitioners do not have the wherewithal to verify whether registration by the vendor has been obtained by falsification of documents.

2.21. The Petitioners further state that they do not have access to the returns filed by the suppliers of goods and there is no other means to ascertain the fact whether they have deposited the GST collected from the petitioners and therefore denying ITC to the petitioners for default of the suppliers would be arbitrary, irrational and unduly harsh.

2.22. The petitioners further state that Section 16(2)(c) of the CGST Act/WBGST Act denies ITC to a buyer of goods or services if the tax charged in respect of supply of goods or services has not been actually paid to the Government by the supplier of goods and services. The provision of Section 16(2) of the CGST Act/WBGST Act is set out below:-

16(2): Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input

tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

2.23. The petitioners further state that Section 16(2)(c) of the CGST

Act/WBGST Act is unconstitutional and against the scheme of
the CGST Act/WBGST Act.

3. That being aggrieved by and dissatisfied in the aforesaid

background, the Petitioner begs to move this Petition under

Article 226 of the Constitution of India before this Hon'ble

Court on the following grounds which are urged in the

alternative and without prejudice to each other.

G R O U N D S

I. For that your petitioners submit that Section 16(2)(c) of the

CGST Act/WBGST Act which seeks to deny ITC to a buyer of

goods or services if the tax charged in respect of supply of

goods or services has not been actually paid to the

Government by the supplier of goods and services is

unconstitutional and against the scheme of the CGST

Act/WBGST Act.

II. For that your petitioners submit that it is arbitrary, irrational

and unduly harsh and therefore violative of article 14 of the

Constitution of India.

III. For that your petitioners submit that a taxable person who

pays the price of goods or services including the amount of

applicable tax to a supplier of goods or services has no means

to verify the fact whether the supplier of goods or services has

deposited the GST collected from it and therefore denying ITC

to the buyer of goods or services for default of the supplier of

goods or services would be arbitrary, irrational and unduly

harsh.

IV. For that your petitioners submit that denying ITC to a buyer

of goods or services for default of the supplier of goods or

services would tantamount to shifting the incidence of tax

from the supplier to the buyer which is unconstitutional and

against the scheme of the CGST Act/WBGST Act. A buyer of goods or services would have to pay GST twice on the same transaction: once at the time of purchase of the goods by paying GST to the supplier and second on disallowance of the ITC. The objective of the CGST Act/WBGST Act is to charge

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tax only on 'value additions' and to avoid a cascading effect of taxes.

V. For that your petitioners submit that Section 16(2)(c) of the

CGST Act/WBGST Act puts an onerous burden on the buyer of goods and services to somehow ensure that the supplier of goods or services does in fact deposit the tax collected from it and if the supplier fails to do so, it undergoes the risk of being denied the benefit of ITC.

VI. For that your petitioners submit that denying ITC to a buyer

of goods and services would tantamount to treating both the

‘guilty purchasers’ and the ‘innocent purchasers’ at par whereas they constitute two different classes. A ‘guilty purchaser’ entering into a tacit agreement or understanding or arrangement in collusion with the ‘guilty seller’ to falsely claim ITC and cause loss of revenue cannot be treated at par with a bona fide purchaser. This is violative of Article 14 of the Constitution inasmuch as it treats both the innocent purchasers and the guilty purchasers alike. In other words, it is submitted that by treating unequals equally, Section 16(2)(c) of the CGST Act/WBGST Act is positively violative of Article 14 of the Constitution. Reliance is placed on the

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decision in *K.T. Moopil Nair v. State of Kerala - AIR 1961 SC 552* and *State of Kerala v. Haji and Haji - AIR 1969 SC 378*.

VII. For that your petitioners submit that the denial of benefit of

ITC to a bona fide purchaser, only because of the default of the supplier, over whom it has no control whatsoever, is arbitrary and irrational.

VIII. For that your petitioners submit that denying ITC to a buyer of goods or services would tantamount to giving the department a free hand in deciding to proceed either against buyer or the supplier or even both when it finds that the tax has not actually been deposited by the supplier with the Government.

IX. For that your petitioners submit that each and every registered taxable person is an agent of the government to collect tax and to deposit the same to the appropriate government treasury and buyer of goods or services is liable to pay tax to its seller at the time of purchase. Section 16(2)(c) of the CGST Act/WBGST Act requires reversal of ITC which has already accrued to a buyer of goods or services, on account of

a fraud committed against the revenue by the supplier of

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goods or services. Therefore it punishes both the perpetrator

of the fraud and the victim and treat both of them on an equal

footing which is totally in contradiction with the mandate

contained under Article 14 of the constitution, which provides

that the equals are to be treated equally, but also lays down

that the unequals should not be treated equally. Section

16(2)(c) of the CGST Act/WBGST Act treats offender and the

victim on the same footing.

X. For that, your Petitioners most humbly submit, that such

denial of ITC to the buyer of goods or services for default of

the supplier of goods or services, severely impacts its working

capital and therefore substantially diminishes its ability to

continue business. Therefore, it is a serious affront to his

right to carry on his trade or business guaranteed under

Article 19(1)(g) of the Constitution.

XI. For that, your Petitioners most humbly further submit, that

such denial of ITC to the buyer of goods or services for default
of the supplier of goods or services, is wholly unjustified and
this causes the deprivation of the petitioner's enjoyment of the

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property. Therefore, this is positively violative of the provision
of Article 300A of the Constitution of India.

XII. For that, your Petitioners most humbly further submit, that

such denial of ITC to the buyer of goods or services for default
of the supplier of goods or services, clearly frustrates the
underlying objective of removal of cascading effect of tax as
stated in the Statement of object and reasons of the
Constitution (One Hundred And Twenty-Second Amendment)
Bill, 2014. Statement of object and reasons of the Constitution

(One Hundred and Twenty-Second Amendment) Bill, 2014

states that the goods and services tax is intended to remove cascading effect of taxes and provide for a common national

market for goods and services. It is also worth mentioning

here that removal and elimination of cascading tax effect is

one of the recommendations of Report of the Task Force on

Goods and Service Tax (Thirteen Finance Commission Report)

for flawless GST.

XIII. For that your petitioners most humbly submit that ITC is

being sought to be denied to it only on the ground that

registration have been obtained by some suppliers on the

basis of fake documents and that none of the RTPs is found in

the Principal Place of business as mentioned in the respective

ARNs for online applications for registration under the Acts.

There is no allegation or evidence whatsoever to dispute the

genuineness of its transaction with the suppliers of goods and there is also no allegation at all that petitioners have not received the goods and consequently it has not been used for the business purpose. In fact, all the goods purchased from the aforesaid suppliers have been exported.

XIV. For that your petitioners most humbly submit that in terms of

Section 16(1) of the Act, which provides the substantive condition for availing ITC, every registered person is entitled to take credit of input tax charged on supply of goods or services or both to him which are used or intended to be used in the course of furtherance of business. Thus, as regards the substantive condition prescribed for availing ITC in Section 16 of the Act is concerned, there is no dispute whatsoever that petitioners have completely fulfilled the same and therefore are eligible to avail ITC.

XV. For that your petitioners most humbly submit that all

reasonable steps were taken to ensure that suppliers are not fictitious by verifying their registration details on the GSTN

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portal and also matching its purchases with the GSTR 2A automatically generated by the GSTN portal.

XVI. For that your petitioners most humbly submit that

registration certificates of all the suppliers were valid at the time of purchase and petitioners do not have the wherewithal to verify whether registration by the vendor has been obtained by falsification of documents.

XVII. For that your petitioners most humbly submit that in the

absence of any finding about its mala fide intention, connivance or wrongful association with the suppliers, no liability can be imposed on it on the principle of vicarious liability.

XVIII. For that your petitioners most humbly submit that in the

present case, petitioners are being asked to do the impossible,
i.e. to find out the suppliers who have obtained registration on
the basis of fictitious documents and therefore avoid
transacting with such suppliers.

XIX. For that your petitioners most humbly submit that even

though petitioners have entered into a genuine business
transaction, they cannot be made to suffer on account of

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fraudulent conduct of the suppliers, who have obtained
registration on the basis of fictitious documents.

XX. For that your petitioners most humbly submit that in the

process of application for registration and granting the
registration thereof, the only two parties, which are involved in
the proceeding, happen to be the applicant and the revenue.

The documents and information, which are produced in the
course of the process of granting registration, are always

within the knowledge of the parties mentioned hereinabove
and upon due satisfaction of all such documents and
information, as furnished by the applicant, the registration
certificate is being granted to an applicant and on the basis of
the said certificate of registration, various parties enter into
transaction with the said registered taxable person. As the
documents and information furnished by a registered taxable
person before the revenue authority in the course of the
registration proceeding, are not within the knowledge of a
party entering into the transaction with him, the legal right of
availing ITC of a third party cannot be infringed.

XXI. For that your petitioners most humbly submit that Hon'ble

Supreme Court had held in the case of Indian Hotel and

Restaurant Association vs State of Maharashtra, (2019) (1)

(433) SCC that impossible conditions imposed upon the

petitioner are unreasonable and unconstitutional.

XXII. For that your petitioners most humbly submit that there has

been a considerable delay in verification of non availability of

the suppliers of goods in their principal Place of business as

alleged and it cannot be said that they did not exist at their

declared place of business in the past also when the

petitioners entered into business transactions with them.

XXIII. For that your petitioners most humbly submit that the action

of the department, in denying ITC only on the ground that

registration have been obtained by some suppliers on the

basis of fake documents and that none of the RTPs is found in

the Principal Place of business, fails to make even a modicum

of attempt to verify whether the petitioners have entered into

genuine transactions, after relying upon the registration

certificates issued by the GST Authorities, while these

certificates were live, and whether petitioners have colluded

with suppliers.

XXIV. For that reply filed in response to the notice requiring reversal

of ITC has been ignored and therefore there has been a

violation of natural justice.

XXV. For that your petitioners most humbly submit that Hon'ble

Supreme Court in *State of Maharashtra v. Suresh Trading*

Company [1998] 109 STC 439 (SC) had held as under:-

“5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. 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. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the

cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.”

XXVI. For that your petitioners most humbly submit that the Hon’ble

Madras High Court in the case of *Jinsasan Distributors v.*

Commercial Tax Officer (CT), Chennai [2013] 59 VST 256

(Mad) had held as under:-

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“In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced.

Whatever benefits that has accrued to the petitioners based on valid documents in the course of sale and purchase of goods, for which tax has been paid cannot be declined. The transaction that took place when the registration certificates

of the selling dealer were in force cannot be denied to the petitioners/assesseees on the above plea. This is contrary to the law laid down by the Supreme Court in the above-stated case.” (page 262 in 59 VST)

XXVII. For that your petitioners most humbly submit that the Hon’ble

Calcutta High Court in the case of *Indian Steel Corporation*

v Deputy Commissioner of Sales Tax, Strand Road

Charge & Ors. reported in Sales tax advices, 2017, Volume

69, No. 3, pg.91, wherein the vires of section 22(12)(d)(a) of

the West Bengal Value Added Tax Act, 2003 was challenged,

has held that once a dealer satisfies himself as to the validity

of the registration certificate of other dealer, it may be too

harsh to question the transaction upon the subsequent

cancellation of the registration certificate of the selling dealer

unless an element of connivance is established.

It is submitted that the State has not gone for appeal against

the said judgment of Hon’ble Calcutta High Court. The said

judgment of Hon'ble Calcutta High Court in the instant case have, therefore, attained finality.

XXVIII. For that your petitioners most humbly submit that the Hon'ble

Supreme Court in the case of ***Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018- VAT]***, has dismissed the Special Leave Petition filed by the Revenue against the decision of the Hon'ble High Court of Delhi in the case of Arise India Limited and others Vs. Commissioner of Trade & Taxes, Delhi and others [TS314-HC-2017(Del)-VAT] ("Arise India case"). The Hon'ble High Court of Delhi had read down Section 9(2)(g) of Delhi VAT Act to preclude the department 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

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40A of the DVAT Act. Section 9 (2)(g) of the DVAT required the purchasing dealer to ensure, for the purposes of claiming ITC, that the selling dealer has deposited VAT with the Government or has lawfully adjusted it against such selling dealer's output tax liability.

XXIX. For that your petitioners submit that it has no other equally efficacious adequate alternate remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India. The remedy by way of writ(s), direction(s) and/or order(s) as prayed for herein, if granted, will be adequate and complete.

XXX. For that your petitioners submit that the subject matter out of which this writ application arises including the grounds as

mentioned herein above, were never before this Hon'ble Court
in any manner whatsoever.

XXXI. For that this petition is made bonafide and in the interest of
justice.

In the aforesaid circumstances, the
Petitioners most humbly pray before
your Lordship:

a) To issue writ of mandamus

and/or any other appropriate

²⁷ writ(s) to hold and declare Section

16(2)(c) of the CGST Act/WBGST

Act to be unconstitutional and

against the scheme of the CGST

Act/WBGST Act;

b) To issue writ of mandamus

and/or any other appropriate

writ(s) to be read down Section

16(2)(c) of the CGST Act/WBGST

Act if constitutional validity of the

impugned provision of law is

upheld, by holding that ITC will

be denied only where purchases

are proved to be collusive and in

the nature of sham transactions.

c) To issue writ of mandamus

and/or any other appropriate

writ(s) to quash the entire

proceedings arising out of notice

vide memo no. 1021CT/11U

²⁸ dated 28.08.19 and memo no.

1213CT/11U dated 11.11.19;

d) To Grant ad-interim relief with

respect to prayer under Para (a) to

Para (c) above;

e) To issue order(s), direction(s),

writ(s) or any other relief(s) as this

Hon'ble Court deems fit and

proper in the facts and

circumstances of the case and in

the interest of justice;

f) To issue Rule Nisi in terms of

prayers (a) to (e) above;

g) To award Costs of and incidental

to this application be paid by the

Respondents;

And for this act of kindness, the Petitioner shall, as in duty bound,

ever pray.

AFFIDAVIT

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I, Tapas Kanti Sengupta, son of Late Sailendra Nath Sengupta, aged about 60 years by faith Hindu, by occupation business, working for gain at P.S. Srijan Corporate Park, Plot No. G-2, Block-G-2, Block-GP, Unit No. III, Tower-1, 18th Floor, Sector-V, Salt Lake City, Kolkata – 700091, do hereby solemnly affirm and state as follows:-

1. That I am the employee of the petitioner No.1. I have been duly authorized by the petitioner No. 1 and 2 by a Constituted Power of Attorney to affirm the instant writ application on their behalf and I am well acquainted with the facts and circumstances out of which the present application arises.

2. That the statements made in paragraphs 1 to 2.4, 2.6 to 2.9, 2.11, 2.13, 2.14, 2.15, 2.17, 2.18, 2.19, 2.22 are true to my knowledge, and those made in paragraphs 2.5, 2.10, 2.12, 2.16 are based on information which I verily believe to be true and paragraph 3 is my humble submissions before this Hon'ble Court.

Prepared in my office The Deponent is known to me

Clerk to :

Advocate Advocate

Solemnly affirmed before me on

this the day of May, 2019. Commissioner

I certify that all annexures are
legible.

Advocate.

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08.01.2020 ss W.P.23512(W) of 2019

M/s. LGW Industries Limited & ors.

Vs. Union of India & ors.

Mr. Vinay Shraff Mr. Rajarshi Chatterjee Mr. H. K. Ray
... for the petitioners

Mr. Abhratosh Majumder, Ld. A.A.G. Mr. Soumitra
Mukherjee Mr. Avra Mazumdeer ... for the State

This matter relates to challenge of Constitutional validity of certain provisions of the C.G.S.T. Act and W.B.G.S.T. Act. Accordingly, let affidavit-in-opposition be filed within a period of four weeks, reply thereto, if any, two weeks thereafter.

Let the matter appear in the combined monthly list of March, 2020 under the heading 'Hearing'.

(Shekhar B. Saraf, J.)