

Guwahati HC set aside SCN since buyer can't be punished if selling dealer had failed to deposit the tax collected by it

Show Cause Notice issued against assessee was to be set aside on following case of **Quest Merchandising India Private Limited v. Government of NCT of Delhi** wherein it was categorically held that a purchasing dealer could not be punished for act of selling dealer in case selling dealer had failed to deposit the tax collected by it.

It is submitted that the Delhi High Court has observed that the provisions of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 can be read down and the ***demand raised against the purchasing dealers, who have entered into bona fide transaction, cannot be sustained.*** It is also submitted that the Special Leave Appeal against the said judgment of the Delhi High Court has already been dismissed by the Hon'ble Supreme Court on 10.01.2018 *vide* Petition for Special Leave to Appeal No.36750/2017.

The Delhi High Court in the said judgment has observed as under: -

Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have *bona fide* transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, **there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish *bona fide* purchasing dealers.** The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a *bona fide* purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution.

The Hon'ble Supreme Court has dismissed the SLP preferred against the said judgment by passing the following order: -

On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.