

M/s. Bharat Aluminium Company limited *Versus* Union of India and others

24.06.2021	<p>Mr. Gopal Mundra, counsel for the petitioner.</p> <p>Mr. Ramakant Mishra, Assistant Solicitor General, for Respondent No.1/ Union of India.</p> <p>Mr. Alok Bakshi, Addl. Advocate General for the State.</p> <p>Heard on admission and I.A.No.1 for grant of ad-interim relief.</p> <p>Learned counsel for the petitioner would submit that the notice was served on petitioner vide Annexure P-1 dated 01.07.2020 wherein an Input Tax Credit as claimed by the petitioner was 95464.59 lakhs and 2A GST, ITC Form was of 86606.67 in lakhs, which if the seller declares. He would submit that the difference of tax 8857.91 lakhs has been claimed along-with interest. He would submit that as per the Press Release of GST Council dated 04th May 2018, there shall not be any automatic reversal of Input Tax Credit of buyer on non- payment of tax by the seller. It is submitted that in case the seller has not paid the tax, a recovery has to be made from the seller and here in this case, the petitioner has come out with the purchases made, but it did not tally/match with 2A ITC shown by the seller meaning thereby the seller may not have filed return to remove the same. When the physical verification was offered to be made by petitioner it was not accepted. It is stated that for the recovery of like nature from the buyer, the action can only be available in the exceptional circumstances. He relies on a proposition laid down by Madras High Court in <i>M/s. D.Y. Beathel Enterprises Vs. State Tax Officer [W.P.(MD) No.2127 of 2021]</i> and</p>	



would submit that in case, it has been held if the default is made by non-payment of tax by the seller, the recovery shall be made from the seller and only in exceptional circumstances, it can be from the recipient, therefore, the Input Tax Credit which was claimed by the petitioner cannot be denied for the reason that the seller has not uploaded their invoices on time.

Learned Counsel appearing for the Union of India and Learned State Counsel pray for time to file reply.

A perusal of the notice and recovery order dated 22.01.2021 would show that the issue raised by the petitioner needs consideration.

The petition is admitted for hearing. Let the reply be filed within four weeks.

It is directed that on petitioner's depositing 5% amount of Rs.14,93,79,211/- demanded vide order dated 22.01.2021 (Annexure P-9) within a period of 15 days, no coercive steps shall be taken pursuant to the said order.

List it in the week commencing **02nd August, 2021**.

Cc as per rules.

R a o

Sd/-
GOUTAM BHADURI
JUDGE

