

**The Apex Court in the State of Karnataka vs M/s Ecom Gill Coffee Trading Pvt. Ltd. reported in 2023 (3) TMI 533 - SC has set the principle of "burden of proof" to avail input tax credit (ITC) under the pre-GST regime.**

The Court has held that buyer must prove the genuineness of the transaction/actual receipt of goods beyond doubt by producing relevant materials, and being a bona fide buyer alone is not sufficient for legitimate claim of ITC.

The aforesaid ratio has been laid down in terms of Sec. 70 of the KVAT Act, which is similar to S. 155 of the existing CGST Act.

Both, the then and the existing provision cast the burden of proof of correctness of ITC claimed on the recipient.

Thus keeping proper documentation as evidence of actual receipt of goods is of paramount importance for successful claim of ITC.

The Court has provided an illustrative list of documents as evidence of actual movement and delivery of goods such as details of delivery vehicle, acknowledgement of receipt of goods, payment record of freight, etc.

Following the above, a suggestive list of documentation has been prepared which should be kept by the company to the extent possible, besides tax invoices, e-way bills and payment records, to establish the genuineness of the transaction/actual receipt of goods which is as follows:

1. Copy of lorry receipt of receipt of goods,
2. Vehicle details mentioned in Part B of E-way bill verified as existing from E-vahan portal,
3. Copy of consignment note/bilty issued by transporter,
4. Copy of payment proof to transporter,
5. Copy of toll receipts,
6. Photographs of entry and unloading of goods in the business premises along with registration plate of conveyance,
7. Gate pass mentioning date and time of receipt of goods in the business premises with reference to invoice & e-way bill no. under which goods are procured,
8. Copy of Purchase Order copy,
9. Copy of email exchange with vendor for taking quotation, providing specification of goods, confirmation of order, etc.
10. Proper SOP for selection and payment to vendor including KYC of vendor.

The above is not an exhaustive but an indicative list of the documents that should be maintained by an entity to the extent possible to discharge the burden of proof of legitimate claim of ITC when questioned. The documents may vary from transaction to transaction.

Association with a few recognised transporters instead of many will also be helpful.

While establishing receipt in case of services can be much more challenging than in case of goods depending on the nature of service, a suggestive list of documentation in case of services, besides agreement, invoice and payment records, is as follows:

1. Copy of email exchange with supplier obtaining quotation and giving confirmation,

2. Exchange of documents establishing performance of work,
3. photographs/copies of deliverables, etc.
4. Ensuring invoicing and payments are consistent with ageement terms.