

GST Judicial Decisions

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Constitutionality of time limit for claiming input tax credit (ITC) under Section 16(4) of the CGST Act is not ultra-vires

Thirumalakonda Plywoods - Writ Petition No. 24235/2023 (High Court of Andhra Pradesh) dated 18th July 2023

In favour of Revenue

Relevant Facts

- Thirumalakonda Plywoods (the Petitioner) was a proprietor engaged in the business of hardware and plywood since March 2020.
- For the period March 2020, the due date for filing GSTR 3B was extended from 20th April 2020 to 30th June 2020.
- Citing the reasons of being new to the business and Covid-19 pandemic, the Petitioner filed its return in form GSTR 3B for the month of March 2020 on 27th November 2020 along with applicable taxes and late fee.
- However, a show cause notice (SCN) disallowing the entire ITC of Rs. 4.79 lakhs-along-with 100% penalty and applicable interest were passed on the grounds that the time limit mentioned under Section 16(4) for claiming ITC were not complied with.
- The Petitioner contended that the non-obstante clause of Section 16(2) would prevail over the provisions of Section 16(4).
- Aggrieved with the Impugned Order, the Petitioner filed writ petition before the Hon'ble Andhra Pradesh High Court.

Held

The Hon'ble Andhra Pradesh High Court held that -

- Section 16(2) prescribed the basic conditions for availing ITC, whereas Section 16(4) prescribed that the assessee shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after due date of furnishing of return under Section 39 for the month of September following the end of financial year (FY), to which such invoices or debit note

pertained or furnishing of the relevant annual returns whichever was earlier.

- Section 16(2) of the CGST Act had no overriding effect on Section 16(4) of the CGST Act as neither of them are contradictory with each other and they would govern independently.
- Mere acceptance of Form GSTR -3B returns with a late fee would not exonerate the delay in claiming ITC beyond the period specified under Section 16(4) of the CGST Act.
- The time limit prescribed for claiming ITC under Section 16(4) of the CGST Act was not violative of Articles 14,19(1)(g) and 300-A of the Constitution of India.

CNK Comments

- The Hon'ble Andhra Pradesh High Court explicitly held that ITC under GST law is a concessional benefit, not a statutory right. Thus, the legislature can impose conditions.*
- Currently, the law allows claiming ITC until 30th November after the end of the FY or furnishing the relevant Annual Return whichever is earlier.*
- The Hon'ble Andhra Pradesh High Court upheld the validity of this timeline. Further, both Section 16(2) & 16(4) of the CGST Act will operate independently.*

Registered person is not entitled to take credit of input tax in respect of any supply of goods or services or both if tax is not paid to the Government

M/s. Jai Balaji Paper Cones - Writ Petition No.6780/2020 (High Court of Madras) dated 3rd July 2023

In favour of Revenue

Relevant Facts

- M/s. Jai Balaji Paper Cones (the Petitioner) were engaged in the business of manufacturing jumbo paper cones, tight bond paper cones and other related products.
- The Petitioner purchased a consignment of goods from one of their suppliers M/s. Raghava Industries vide 3 invoices dated 23.11.2018. The payment against the said invoices was also made to

the respective supplier. However, GST registration of the said supplier was cancelled earlier on 31.10.2018.

- The ITC on the said invoices was disallowed by the revenue on the grounds that the registration of the supplier was cancelled prior to the execution of sale transactions and hence the Petitioner was not entitled to claim the benefit of Section 16(2)(c) of the CGST Act 2017.
- Aggrieved with the Impugned Order the Petitioner filed writ petition before the Hon'ble Madras High Court.

Held

The Hon'ble Madras High Court held that,

- As per Section 16(2)(c) of CGST Act it is required that, "The tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of ITC admissible in respect of the said supply".
- Thus, a registered person was not entitled to credit of input tax in respect of any supply of goods or services of both if tax was not paid to the Government. The registration of the supplier had been cancelled on 31.10.2018 i.e., before the 3 invoices dated 23.11.2018 were raised. Thus, it was clear that the supplier could not have paid the tax to the ex-chequer.
- Therefore, there was no merit in the present writ petition. The Petitioner was however entitled to recover the amount from the supplier in the manner known to law.

CNK Comments

The receiver of supplies was dutybound to check the status of the registration of the supplier. This judgement highlights that even if all the conditions laid down in the provisions of Section 16(2) of the CGST Act 2017 are satisfied, the claim of ITC can be disallowed although the receiver of supply has made the tax payments to the supplier. However, it was also pertinent to note that such a claim of ITC would be disallowed only if the registration was cancelled prior to the date when the said transaction of supply was executed.

No automatic reversal of ITC from the buyer upon non-payment of tax by the supplier

Suncraft Energy Private Limited-Writ Petition No. Mat 1218/2023 (High Court of Calcutta) dated 2nd August 2023

In favour of Assessee

Relevant Facts

- M/s. Suncraft Energy Private Ltd (the Appellant) had availed GST ITC for its purchases from a supplier. The ITC was later reversed by the revenue authority due to non-payment of taxes by the supplier, as some of the invoices of the said supplier were not reflected in GSTR 2A of the Appellant for FY 2017-18.
- The Appellant submitted that all the conditions as stipulated under Section 16 of the CGST Act, 2017 for availment of ITC had been fulfilled.
- Further, to substantiate the possession of a valid tax invoice and payment details to the supplier, the tax invoice and the bank statement had been produced during verification.
- However, the submissions of the Appellant were disregarded by the revenue on the grounds that the said taxes were eventually not paid to the government.

Held

The Hon'ble Calcutta High Court held that -

- Furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient was in the nature of taxpayer facilitation and does not impact the ability of the taxpayers to avail ITC.
- There should not be any automatic reversal of ITC from buyer on non-payment of tax by seller. In case of a default in payment of tax by the seller, recovery should be made from the seller.
- Also, the court directed the respondents to proceed against the supplier first and only in exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc., the reversal of GST ITC from

the buyer should also be an option available with them.

CNK Comments

This judgement re-iterates the Madras High Court judgement in the case of D.Y. Beathel Enterprises Vs State Tax Officer WP No 2127 of 2021 wherein it was held that in case of non-payment of tax by the supplier, he must be questioned first before proceeding to withdraw the ITC of the genuine recipient who has satisfied all conditions of Section 16 of the GST Act.

ITC is available on gold coins distributed to dealers as incentive under the scheme. However, such distribution will be considered as supply under GST and will be covered under Schedule 1 of the CGST Act 2017 if ITC is claimed on such goods

M/s. Orient Cement Limited [Advance Ruling No. KAR ADRG 27 of 2023] dated 24th August 2023

Partly in favour of Assessee and partly in favour of Revenue

Relevant Facts

- M/s. Orient Cement Limited (the Applicant) was engaged in manufacturing and supply of Cement.
- The Applicant offered various sales promotional schemes to the dealers as incentives to them and helped them to achieve the sale targets. One such scheme was “Monthly/ Quarterly Discount Scheme”, wherein the dealer had to purchase specified quantity of material in order to avail the discount. The said discount would be credited to the dealer’s account. The Applicant instead of adjusting the amount in account of dealer, provided gold coins or white goods to them.
- The higher the quantity of cement purchased by the dealer, higher would be the discount earned by dealer resulting into higher eligibility of gold coins or white goods.
- The Applicant sought an Advanced Ruling on whether the obligation to issue gold coins or white goods to its dealers on target achievement would

amount to supply and whether they were eligible to avail ITC on such gold coins given to dealers.

- The Applicant also sought ruling on whether the obligation to issue gold coins or white goods to its dealers on target achievement would amount permanent or disposal of business assets on which ITC has been claimed and would be treated as supply even if made without consideration and be liable to GST as per Schedule 1 of the GST Act 2017.
- The Applicant further sought ruling on whether the obligation to issue gold coins or white goods to its dealers on target achievement would amount to Supply under Section 7 of the GST Act 2017.

Held

The Authority of Advanced Ruling, Karnataka, in Advance Ruling No. KAR ADRG 27 of 2023 held as under:

- The Applicant had issued gold coins or white goods as incentives as per the agreement between the Applicant and the dealers. It was only issued subject to the fulfilment of certain conditions and stipulations.
- Further observed that the issue of gold coins or white goods was for achievement of marketing targets set by the Applicant.
- The Applicant’s obligation to issue gold coins or white goods upon achievement of marketing targets would be regarded as a permanent transfer or disposal of business assets where ITC had been availed on such assets and would be treated as supply under Schedule I to the CGST Act, 2017
- Further it was held that “gift” was something which was given without any conditions and stipulations and the hence in the current context, the same cannot be covered under the scope of gift.
- Section 17(5)(h) of the CGST Act states that ITC was not available on “goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples”. Since the gold coin or white goods were not given as gifts, this clause was not applicable to the present transaction.
- Held that, the Applicant’s obligation to issue gold coins or white goods upon achieving targets by the

dealers would be regarded as supply and was liable to GST and at the same time ITC was not restricted under any of the provisions of Section 17 more so under Section 17(5)(h) of the CGST Act.

CNK Comments

This is a welcome ruling to the extent it clarifies that incentives/ discount are not regarded as gifts and thus, the ITC on the above was not restricted as per Section 17(5)(h) of the CGST Act. However, the issue of gold coins or white goods would be under the ambit of supply under Schedule I of CGST Act under clause “permanent transfer or disposal of business assets where ITC has been availed on such assets” and would be liable to GST. Thus, the ruling in a way negates what it grants on the inward side by way of ITC by taxing it on the outward side by levy of GST.



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