



Tax alert: Gauhati High Court reads down section 16(2)(aa) of CGST Act, allows input tax credit to bona fide recipients where supplier failed to upload invoice in GSTR-1 return

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The Gauhati High Court (HC) has read down amendment to Section 16(2)(aa) of the Central Goods and Service Tax, 2017 (CGST Act) introduced w.e.f. 01 January 2022, which prescribes the condition for reporting of invoice/debit note by the supplier in GSTR-1 return and also in turn gets communicated to the recipient. The HC held that input tax credit (ITC) benefits cannot be denied to a bona fide purchaser due to supplier non-compliance.

In a nutshell



The HC has read down section 16(2)(aa) of CGST Act, to the extent that before denying the ITC benefits to a bona fide purchaser in case the supplier does not or incorrectly reports the supply in the GSTR-1 return, the purchaser ought to be given an opportunity to prove his bona fides, which can be verified by the tax invoices and other documents.



It observes that the restriction is quite unfair because an onerous burden is placed on the purchasing dealer. The HC did not declare section 16(2)(aa) unconstitutional, acknowledging its intent to prevent fraud and promote supplier compliance.



Reading down of the said section has been done only till the time CBIC provides a practical solution to this issue of ITC availability to genuine recipients.



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Background:

- The petitioner company has questioned the validity of the provisions contained in Section 16(2)(aa) of the CGST Act introduced through amendment w.e.f. 01 January 2022, which puts a condition that ITC would be available to a purchaser, subject to supplier furnishing the invoice/ debit note details in his GSTR-1 return and that the details of such invoice/ debit note is communicated to the recipient in GSTR-2A/2B.
- Petitioner contended that ITC should not be denied to the recipient for the non-compliance by the supplier as:
 - The recipient has already paid the tax to the supplier.
 - Supplier may not have filed their GSTR 1 or disclosed the invoice in GSTR 1 for multiple reasons.
 - The GST law does not provide the purchaser with any such mechanism to take any action against such non-disclosure.
 - Recipient 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 secondly, on disallowance of the ITC.
 - Circular No.183/15/2022-GST dated 27 December 2022 and Circular No.193/05/ 2023-GST dated 17 July 2023 had arranged up to 31 December 2021, to allow ITC to recipients where ITC details were not correctly reported in Form GSTR-1 by the supplier, causing non-reflection in Form GSTR-2A as it existed up to 31 December 2021. Such Circulars should be made applicable for the period on or after 01 January 2022.

Reliance was placed on various judicial precedents¹ whereby the benefit of ITC was made available to the registered purchaser/ dealer, who paid taxes to the registered seller/ dealer on invoices raised by them, even though those sellers did not deposit the collected tax with the Government.

- The respondents defended the provision, asserting that ITC is a concession, subject to conditions prescribed under law. The said provision was introduced to curb fraudulent ITC claims and enhance supplier compliance.

High Court judgement²

- The HC has read down section 16(2)(aa) of CGST Act, to the extent that before denying the ITC benefits to a bona fide purchaser in case the supplier does non-compliance, the purchaser ought to be given an opportunity to prove his bona fides, which can be verified by tax invoices and other documents.
- Merely because the ITC is not reflected as prescribed (i.e., in GSTR-2B) to a buyer, the ITC benefit to a bona fide buyer cannot be denied as that would be against the object and purpose of the GST law, i.e., to avoid any cascading effect of taxation.
- Such reading down of this provision has been done only till the time the CBIC provides a practical solution to this issue of ITC availability to the bona fide purchaser, which is contingent on factors which are in the hands of a supplier.
- The reasoning given by the HC is as under –
 - The restriction is quite unfair because an onerous burden is placed on purchasing dealer.

¹ Commissioner Trade and Tax, Delhi -Vs- M/s Shanti Kiran India (P) Limited [Civil Appeal No(s).2042-2047/2015, On Quest Merchandising India Private Limited -Vs- Government of NCT of Delhi & Ors. :: 2017 Scc OnLine (Delhi) 13037, Suncraft Energy Private Limited & Ors. -Vs- The Assistant Commissioner, State Tax, Ballygunge Charge & Ors :: (2023) 117 GSTR 78 (Cal) (affirmed by the Supreme Court reported in (2024) 121 GSTR 230), Diya Agencies -Vs- STO :: (2024) 124 GSTR 172 (Kerala High Court)

²MCLEOD Russel India Limited vs The Union of India [TS-995-HC(GAUH)-2025-GST]

- Since the object and purpose is to prevent fraudulent ITC claims and to promote supplier compliance, the HC was not inclined to hold the said section unconstitutional.

Comments:

This judgement offers significant relief to genuine recipients in cases of supplier default to report the transaction in the GSTR-1 return. However, businesses should maintain precise documentations to establish bona fides in case of any such disputes. To establish its claim for ITC when a supplier has defaulted, a buyer can use documents such as valid tax invoices, proof of actual receipt of goods or services, bank statements to show payment to the supplier, e-way bill and transport evidence etc., as evidence of a genuine transaction.

The judgment also highlights the need for systemic solution from the CBIC to ensure that bona fide recipients do not suffer due to supplier's non-compliance. Until such measures are implemented, bona fide recipients may rely on this decision to safeguard their ITC claims in case of supplier defaults.

The Supreme Court (SC) in the case of M/s. Shanti Kiran India (P) Ltd.³ had upheld ITC eligibility on bona fide purchase transactions, despite supplier's subsequent default in depositing tax with the Government, under the Delhi VAT laws. Under GST laws, there are various favourable HC judgements that have ruled that the department must proceed against the defaulting supplier before denying ITC to the buyer in cases of bona fide purchases i.e., there is a valid tax invoice, goods/services have been received and payment has been made to the supplier. Thus, it can be observed that the courts have increasingly leaned towards protecting bona fide recipients for ITC claims.

³ The Commissioner Trade and Tax Delhi v. M/s. Shanti Kiran India (P) Ltd. 2025-VIL-83-SC



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