



Tax alert: Tripura High Court has held that ITC cannot be denied to recipient in case of bona fide transactions due to default of supplier to deposit GST

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The High Court (HC) of Tripura has held that the recipient would be eligible to claim input tax credit (ITC) where tax has been paid to the supplier and benefit of ITC cannot be denied to the recipient due to default on the part of supplier to deposit tax. Applying the principle of reading down, the HC held that Section 16(2)(c) of the CGST Act should only be applied where the transaction is found to be not bona fide or is a collusive/ fraudulent transaction to defraud the revenue.

In a nutshell



The HC has held that section 16(2)(c) of CGST Act (i.e., recipient to be eligible for ITC when tax is deposited by the supplier) should be made applicable only in case of fraudulent/ collusive transactions.



Where the recipient demonstrates bona fides, ITC cannot be denied simply because the supplier did not deposit the collected tax with the Government.



The Court held that ITC is introduced to avoid double tax burden on a taxpayer under the GST regime. The intention was not to punish a taxpayer by denying him ITC if the transaction entered by him with a supplier is bona fide.



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Background:

- The petitioner company had purchased goods from a supplier between July 2017 to January 2019.
- On an investigation, it was discovered that the supplier was supplying goods to different traders but was not depositing the GST paid by the purchasers, with the Government.
- The supplier had filed Form GSTR-01 return showing the sale of goods to the petitioner but failed to deposit the tax collected from petitioner while filing GSTR-3B returns. It had filed 'Nil' GSTR-3B returns.
- The Revenue contended that as the supplier did not deposit the GST with the Government, petitioner is not eligible to avail ITC as per section 16(2)(c) of the CGST Act, even though petitioner had already paid the GST amount to the supplier. The ITC balance of the electronic credit ledger (ECL) of the petitioner was blocked by the revenue.
- Subsequently a show cause notice was issued for reversal of the disputed ITC with interest and penalty and thereafter an order confirming the demand was passed. A writ petition was filed by the company challenging the order.
- The petitioner challenged the constitutional validity of section 16(2)(c) of the CGST Act as violative of Art.14,19(1)(g) and 300-A of the Constitution of India.

High Court judgement¹

- Section 16(2)(c) of the CGST Act is not violative of Art.14, 19(1) (g) or 265 or 300-A of the Constitution of India².
- Section 16(2)(c) of the CGST Act should be applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue³.
- In this case, the transaction between the petitioner and the supplier is a bona fide transaction and not a collusive transaction and, the conduct of the supplier is blameworthy. Petitioner cannot be penalised by denying ITC under section 16(2)(c) of the CGST Act.
- The reasoning given by the HC is as under –
 - The concept of ITC is to avoid burden of double taxation on the taxpayer. It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice.
 - It is impossible for the purchaser to check whether the supplier has deposited the tax paid by him to the Government and then avail ITC. The restriction places an onerous burden is placed on purchasing dealer.
 - The lawmakers did not intend to punish a taxpayer by denying him ITC if the transaction entered by him with a supplier is bona fide.

¹ M/s Sahil Enterprises Vs. UOI and Ors, WP (C) No. 688 of 2022

² Reliance has been placed on SC judgement in the case of CST v. Radhakrishan (1979) 2 SCC 249 : (1979) 118 ITR 534, at page 257

³ Reliance has been placed on Quest Merchandising India Pvt.Ltd and others v. Government of NCT of Delhi and others (2017) SCC ONLINE DELHI 13037 which was affirmed by Supreme Court in Commissioner of Trade and Tax Delhi v. M/s Arise India Ltd. Special Leave to Appeal (Civil) No.36750 of 2017 dt. 10.1.2018, Supreme Court judgement in the case of Commissioner Trade and Tax, Delhi v. M/s Shanti Kiran India (P) Ltd Civil Appeal No.9902 of 2017 dt.9.10.2025. Made reference to National Plasto Moulding v. State of Assam (2024) 8 TMI 836= 2024(89) GSTL 82 (Gau), M/s McLeod Russel India Ltd. V. Union of India and 3 others (2025) 3 TMI 59 (Gau).

- The HC distinguished the earlier HC judgements⁴ that have upheld the constitutionality of section 16(2)(c) of the CGST Act. It was observed that the practical impossibility for a purchaser to ensure that the seller pays the GST to the Government particularly when he has no means of checking the said fact was not considered in these cases and that the favorable judgements⁵ in this context have not been considered.

Deloitte Comments:

This judgement has read down section 16(2)(c) of the CGST Act to apply it only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the Revenue. It has observed that ITC cannot be denied to bona fide recipients in cases of supplier default to discharge its tax liability to the government. It is imperative that business should establish their bona fides in 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 Supreme Court (SC) in the case of M/s. Shanti Kiran India (P) Ltd.⁶ 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. Tripura High Court follows the principles laid down by Supreme Court and distinguishes contrary judgments by different High Courts where such principles were not considered.

⁴ M.Trade Links v. Union of India, Nahasshukoor and another v. Assistant Commissioner 2023 SCC Online Ker 11369; Aastha Enterprises v. State of Bihar 2023 SCC Online Pat 4395, M/s Shree Krishna Chemicals v.Union of India 2025 (2) TMI 1006 (M.P), M/s Baby Marine (Eastern) Exports v. Union of India and others 13 2025 (8) TMI 791(Madras), Thirumalakonda Plywoods v. assistant Commissioner 2023 SCC Online AP 1476

⁵ Quest Merchandising India Pvt.Ltd and others (2017) SCC ONLINE DELHI 13037 approved by the Supreme Court in M/s Arise India (Special Leave to Appeal (Civil) No.36750 of 2017 dt. 10.1.2018) and in M/s Shanti Kiran STA No.34 of 2012 and batch dt.4.1.2013 (Delhi High court) also approved by the Supreme Court in Commissioner of Trade and Tax, Delhi v. M/s Shanti Kiran India (P) Ltd. Civil Appeal No.9902 of 2017 dt.9.10.2025

⁶ The Commissioner Trade and Tax Delhi v. M/s. Shanti Kiran India (P) Ltd. 2025-VIL-83-SC

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