HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.688 of 2022

M/S. Sahil Enterprises, Khaitan Ni.3483, Ward No.9, Khayerpur Mouja, Assam Agartala Road, Agartala, West Tripura-799008, GSTIN: 16PFPS9527H1ZF.

……. Petitioner(s).

V E R S U S

1. Union of India, through its Secretary, Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.

2. Commissioner, Central Goods & Services Tax, Tripura Division-I, Jackson Gate Building, 3rd Floor, Lenin Sarani, Agartala, Tripura-799001.

3. Assistant Commissioner, Tripura Division-I, Jackson Gate Building, 3rd Floor, Lenin Sarani, Agartala, Tripura-799001.

4. M/S. Sentu Dey, Represented by its Proprietor Sri Sentu Dey, Bairagi Bazar, Jumerdhepha Melaghar, Sepahijala, Tripura Pin-799115.

……Respondent(s).

For Petitioner(s) : Mr. Naveen Bindal, Advocate,
Mr. Mukul Singla, Advocate,
Mr. Prabal Kumar Ghosh, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy S.G.I.,
Mr. Bibhal Nandi Majumder, Sr. Advocate,
Mr. Biplabendu Roy, Advocate,
Mr. Elembrok Debbarma, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

CAV reserved on : **27.11.2025**.

Judgment delivered on : **06.01.2026**

Whether fit for reporting : **YES**.

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

1) The challenge in this Writ Petition is primarily to the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act,2017 (for short 'the Act'). In addition, petitioner has also sought for quashing of an order dt.17.5.2022 issued by the Assistant Commissioner,

Central Goods and Services Tax, Tripura Division-I, Agartala (Respondent no.3) confirming a demand of Rs.1,11,60,830/- along with interest and penalty under section 73 of the said Act.

The factual background to the filing of the Writ Petition:

2) The petitioner, a proprietary concern engaged in trading of rubber products, had purchased different products from M/s Sentu Dey (for short "supplier/ Respondent no.4") on due payment of Goods and Services Tax (for short 'GST') and further sold them as such. These transactions took place between July,2017 to January,2019 involving GST of Rs.1,11,60,830/- which it had paid to its vendor/supplier.

3) On an investigation by officers of the Enforcement Branch of the CGST Commissionerate, Agartala of the supplier Company, it was discovered that the respondent no.4 was supplying rubber products to different traders, but was not depositing the GST paid by the purchasers to it including the petitioner with the Government. Respondent no.4 had filed Form GSTR-01 return under section 37 of the Act showing the sale of goods to the petitioner, but failed to deposit the tax collected from petitioner while filing GSTR-3B under section 39 of the Act. It had filed 'Nil' GSTR-3B returns.

4) The respondent No.3 opined that as Respondent no.4 did not deposit the GST with the Government, petitioner is not eligible to avail Input Tax Credit (*for short* 'ITC') of the same amount to discharge it's output tax liability even though petitioner had already paid the GST amount to Respondent no.4. The respondent nos.1 to 3 blocked the whole ITC balance as on 8.2.2021 amounting to Rs.7,32,353/- from the Electronic Credit Ledger of the petitioner.

5) When petitioner sent an email dt.15.5.2020 enquiring about the blocking of the ITC in its Electronic Credit ledger, the respondent No.3, by letter dt.21.5.2020 informed petitioner that Respondent no.4 had not discharged its tax liabilities to the Government, and as petitioner had made purchases from Respondent no.4, it is not entitled to ITC of the tax paid by it to Respondent no.4.

6) Later on 7.1.2021, the respondent issued a Demand–cum-Show cause notice to petitioner invoking Section 73 of the Act asking petitioner to show cause why Rs.1,11,60,830/- wrongly availed by petitioner as ITC should not be reversed along with interest and penalty.

7) Petitioner submitted reply on 8.2.2021 stating that it could only verify the details of outward supplies reflected in GSTR-2A and there was no mechanism to verify the GSTR-3B filed by its supplier, Respondent no.4. It contended that since it had paid the GST to Respondent no.4 and had availed the ITC as per law, the demand raised in the respondent No.3's notice should be dropped.

8) But on 17.5.2022, the respondent No.3 passed orders confirming the demand raised in the show cause notice. This order is impugned in the Writ Petition.

9) Petitioner had also filed a W.P.(C) 531 of 2021 in this Court challenging the show cause notice issued by respondent, but after the order dt.17.5.2022 was passed, it withdrew the said writ petition and then filed the instant writ petition challenging the constitutional validity of Section 16(2) (c) of the Act as violative of Art.14,19(1)(g) and 300-A of the Constitution of

India and also challenging the order dt.17.5.2022 passed by the respondent no.3.

10) The respondents 2 and 3 filed counter affidavit refuting the pleas of the petitioner and contended that there is no basis to say that Section 16(2)(c) of the Act is violative of above provisions of the Constitution and contended that it is valid in all respects. They also contended that Courts must be slow in inferring unconstitutionality of taxing statues as legislature has lot of freedom in enacting such laws. According to them the impugned order dt.17.5.2022 does not suffer from any defect or error and should be sustained.

Consideration by the Court:

11) Section 16 deals with eligibility and conditions for taking ITC. The said section to the extent relevant for our consideration states:

> *"**Section 16. Eligibility and conditions for taking input tax credit.-***
>
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
>
> *(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*
>
> *(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
>
> *[1][(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to*

the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

*[2][**Explanation**.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

[3][(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of [4][section 41 [5][***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

***Provided** that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:*

***Provided** further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [9][paid by him along with interest payable under section 50], in such manner as may be prescribed:*

***Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [10][to the supplier] of*

the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) ……

(4) … …

*[8][**Provided … …***

[11][(5) … ….

(6)… … " (emphasis supplied)

12) Section 16 (2) (c) of the Act thus denies to an assessee availment of ITC in relation to supply of goods or services or both if tax charged in respect of such supply has not been actually paid to the Government or through utilization of input tax credit admissible in respect of the said supply.

13) Rule 36 of the Central Goods and Services Tax Rules, 2017 is also relevant and it states:

*"**Rule 36: Documentary Requirements and Conditions for claiming Input Tax Credit:***

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, –

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there-under for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input

Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under section 74 .

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1**, *as amended in* **FORM GSTR-1A** *if any, or using the invoice furnishing facility; and*

(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** *under sub-rule (7) of rule 60."*

14) Thus GST is paid by the purchaser to a supplier on purchase of goods or services. The purchaser/dealer then avails the tax paid to the supplier as ITC in its Electronic Credit Ledger and offsets its partial liability by using the said ITC and the tax collected on the profit margin is paid in cash. The concept of ITC is to avoid burden of double taxation on the tax payer.

15) Section 16 deals with the eligibility conditions to avail ITC. Section 16(2) (c) allows availment of ITC to the purchaser only when the

supplier had discharged the output liability through cash or by using ITC. But if the supplier has not paid the tax to the Government, the purchaser is not eligible to avail ITC.

16) The fact that there is no mechanism with the recipient of goods to verify whether the supplier has discharged its liability to the Government, or not, is not disputed by respondents. In view of this, 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. Also the supplier is not normally under the control of the purchaser. It is not disputed that it is not possible for a purchaser to keep a check on activities of its supplier or ensure that the latter makes over to the Government, the GST paid to him by the purchaser.

17) Petitioner contends that to deny a purchaser like petitioner, who is a bona fide purchaser, and who has paid the GST to the supplier, the ITC benefit is arbitrary and unreasonable and violates Art.14, 19(1) (g) and Art.300-A of the Constitution of India. They contend that for a mistake on the part of the supplier to make over the tax collected from purchaser to the Government, the purchaser cannot be found fault with. Otherwise, it would be penalizing a person for a mistake of another person. By denying the purchaser availment of ITC and making the purchaser pay the tax to the Government again amounts to double collection when he has already paid to the supplier and it violates Art.265 of the constitution of India.

18) We find considerable force in the contention of the petitioner.

19) In our opinion, there is a failure by the Parliament, while enacting Section 16 (2)(c) of the Act, to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions

as required by the Act and those that have not. Therefore, there is need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers.

20) The purchasing dealer cannot be asked to do the impossible, i.e., to identify a selling dealer who will not deposit with the Government, the tax collected by him from purchasing dealers, and avoid transacting with such selling dealers.

21) Alternatively, what section 16(2)(c) of the Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer; and if the selling dealer fails to do so, undergo the risk of being denied the ITC. It would be extremely difficult for a purchasing dealer to ensure that the selling dealer deposits the GST collected from him with the Government.

22) So section 16(2) (c) of the Act places an onerous burden on a bona fide purchasing dealer.

23) In these circumstances, if the law seeks to visit disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

24) Reading down a provision is undoubtedly an accepted method to save it from the vice of unconstitutionality. It would be appropriate in the instant case too to adopt the said principle.

25) In ***B.R. Enterprises v. State of U.P.***[1]**,** the situation where such a principle of reading down can be applied is explained in the following terms:

> *"81. ..... Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated."*

26) In ***CST v. Radhakrishan***[2], sanction for prosecution of a dealer under the M.P. General Sales tax Act was given by the Commissioner of Taxes under section 46 (1) (c) of the said Act, though there was a procedure for recovery of tax by imposing penalty under section 22(4-A) of the said Act. The validity of the sanction was questioned on the ground that under the Sales Tax Act, the Commissioner is entitled to pursue two different procedures for enforcing and realizing the assessment made, but as there is no guidance as to the circumstances in which he should resort to either of the two procedures, the provision regarding grant of sanction is invalid. Rejecting the said

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[1] (1999) 9 SCC 700 : (2000) 120 STC 302, at page 764 :

[2] (1979) 2 SCC 249 : (1979) 118 ITR 534, at page 257

contention and reading down the provision enabling prosecution for failure to pay tax by a dealer, the Supreme Court held:

> *"15 . ... In considering the validity of a statute the presumption is in favour of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. It is well settled that courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to rule of reading down the sections if it becomes necessary to uphold the validity of the sections. In the present case it is seen, under Section 46 before a prosecution can be launched, it is necessary that the assessee should have failed to pay the tax due within the time allowed without reasonable cause. The duty of the Commissioner is, therefore, to be satisfied that the assessee has failed without reasonable cause and without recourse to prosecution under Section 46(1)(c), the tax due cannot be collected. The provisions of Section 22(4-A) can be read as being applicable to cases in which the stringent step of prosecution is considered not necessary. The option is with the Commissioner and if he thinks levy of penalty would achieve the purpose of collection of the tax he can have recourse to the provisions of Section 22(4-A). Before levying a penalty under Section 22(4-A), the Commissioner shall give reasonable opportunity of being heard as to why the penalty should not be levied. Reading the two provisions harmoniously, we are of the view that the discretion is*

> *given to the Commissioner to resort to one of the two remedies as the facts of the case may require. In graver cases he will be justified in taking the drastic remedy and resorting to prosecution in the criminal court if he is satisfied that such a course is necessary for the collection of the tax expeditiously. If the discretion is not properly exercised the court may be justified in interfering in such cases but the law cannot be held to be invalid."*
>
> (emphasized supplied)

27) A provision similar to Section 16(2)(c) of the Act also existed in Section 9(2) (g) the Delhi Value Added Tax Act, 2004.

28) This provision was considered by the Delhi High Court in ***Quest Merchandising India Pvt.Ltd and others v. Government of NCT of Delhi and others***[3]**.**

Section 9(1) of DVAT Act permits ITC to a registered dealer in respect of turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under Section 7 of the DVAT Act. Sub section (2) of Section 9 sets out the conditions under which such ITC would not be allowed. Clause (g) of sub-section (2) of Section 9 made ITC benefit available to a purchasing dealer only when the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.

Reading down clause (g) of sub-section (2) of Section 9, in On ***Quest Merchandising India*** (3 supra), the Delhi High Court held:

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[3] (2017) SCC ONLINE DELHI 13037

"39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution.

40. ... ...

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer. ....

53.. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who

have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act." (emphasis supplied)

29) The aforesaid decision of the High Court was challenged before the Supreme Court in ***Commissioner of Trade and Tax Delhi v. M/s Arise India Ltd***.[4]. The said Special Leave petition was dismissed without interfering with the order of the High Court. The Supreme Court held:

"On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The Special Leave Petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the cases where the purchase transactions are

[4] Special Leave to Appeal (Civil) No.36750 of 2017 dt. 10.1.2018

not bona fide like the present case and those cases ought to have been remitted back to the competent authority.

Learned Additional Solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for."

30) The same issue again arose in the Delhi High Court in ***M/s Shanti Kiran India (P) Ltd v. The Commissioner Trade and Tax, Delhi.***[5] i.e whether the benefit of ITC is available to the registered purchaser dealers who paid taxes to the registered seller dealer(s) in terms of invoice(s) raised by them even though those seller dealers did not deposit the collected tax with the Government**.** The Delhi High Court held in favour of the purchaser dealers and against State.

31) This judgment was again challenged in the Supreme Court in ***The Commissioner Trade and Tax, Delhi v. M/s Shanti Kiran India (P) Ltd***[6]**.** The Supreme Court followed the decision of the Delhi High Court in ***Quest Merchandising India Pvt.Ltd*** (3 supra) as affirmed by the Supreme Court in ***M/s Arise India*** (4 supra) and held:

"In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed."

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[5] STA No.34 of 2012 and batch dt.4.1.2013 (Delhi High court)
[6] Civil Appeal No.9902 of 2017 dt.9.10.2025

32) The contention of the Dy. Solicitor General of India that the judgments of the Supreme Court in ***M/s Arise India*** (4 Supra) and in ***Commissioner Trade and Tax, Delhi*** (6 supra) are not binding precedents, cannot be countenanced.

33) This is because in the former case, the Solicitor General, who is the law officer of the Union of India, himself wanted to pursue cases pending in the Delhi High Court where the transactions were not bona fide, thus implying that the Government had accepted the basis of the judgment. In the latter case, the Supreme Court applied to the facts of the said case the principle that if the transactions are not doubted, ITC cannot be denied. When the principle is actually applied by the Supreme Court to the facts of the case, it has to be taken that the view in ***Quest Merchandising India Pvt.Ltd*** (3 supra) has been approved by the Supreme Court and it cannot be contended that it's judgment is not a precedent.

34) We are of the view that the same reasoning as adopted by the Delhi High Court in ***Quest Merchandising India Pvt.Ltd*** (3 supra) and ***M/s Shanti Kiran India (P) Ltd*** (5 supra) as approved by the Supreme Court, should be adopted to the interpretation of Section 16(2) (c) of the Act.

35) It ought not to be interpreted to deny ITC to purchasers in a bona fide transaction and should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue.

36) The Gauhati High Court in ***National Plasto Moulding v.State of Assam***[7]***,*** where the constitutionality of Section 16(2) (c) of the Act was

[7] (2024) 8 TMI 836= 2024(89) GSTL 82 (Gau)

challenged, observed that the controversy was squarely covered by the decision of the Delhi High Court in ***On Quest Merchandising India Private Limited (3 supra)*** as approved by the Supreme Court in ***Arise India*** (4 supra), and also read down the said provision and declined to apply it to a purchasing dealer, who had bona fide entered into purchase transactions with validly registered selling dealers. It set aside the show cause notices and the consequential orders challenged in the batch of the Writ Petitions. It held that the Department is free to act in the said cases where purchase transactions are not bona fide.

37) It reiterated the same in ***M/s McLeod Russel India Ltd. V. Union of India and 3 others***[8]**.**

38) It is stated across the bar that the SLP filed against the judgment in ***National Plasto Moulding (7 supra)*** was dismissed by a non-speaking order and that no SLP had been filed by the Union of India against the judgment in ***M/s McLeod Russel India Ltd (8 supra).***

39) No doubt some High Courts have upheld the constitutionality of Section 16(2) (c) of the Act *without reading it down*. They are:

(a) Kerala High Court in ***M.Trade Links v. Union of India, Nahasshukoor and another v. Assistant Commissioner***[9]

(b) Patna High Court in ***Aastha Enterprises v. State of Bihar***[10]

(c) Madhya Pradesh High Court in ***M/s Shree Krishna Chemicals v.Union of India***[11]

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[8] (2025) 3 TMI 59 (Gau)
[9] 2023 SCC online Ker 11369
[10] 2023 SCC Online Pat 4395
[11] 2025 (2) TMI 1006 (M.P)

(d) Madras High Court in ***M/s Baby Marine (Eastern) Exports v. Union of India and others***[12]

(e) Andhra Pradesh High Court in ***Thirumalakonda Plywoods v. assistant Commissioner***[13]

40) In the opinion of these High Courts, the legislature must enjoy a wide and flexible power to enable it to adjust its system of taxation in proper and reasonable ways, though it is permissible to declare a taxation statute as unconstitutional if it infringes the fundamental rights guaranteed under part III of the Constitution; that input tax credit is in the nature of a benefit or concession extended to the dealer under the statutory scheme ; even if it held to be an entitlement, this entitlement is subject to the restrictions as provided under the scheme or the statute; and that claim to input tax is not an absolute right, but it can be said that it is an entitlement subject to the conditions and restrictions as envisaged in Section 16(2) to 16(4), Section 43 , and the Rules made thereunder. They hold that as per the scheme of the Act only tax paid and collected and paid to the Government could be given as ITC; and when the Government has not received the tax, a dealer cannot be given ITC. According to some of them, taxation legislation may not be easily interfered with and Court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional; that challenge to it on ground of violation of Art.14 is vague; and that the remedy of the purchasing seller is to sue the seller for recovery of the tax he had paid which the latter had not paid to the Government.

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[12] 2025 (8) TMI 791(Madras)
[13] 2023 SCC Online AP 1476

41) But none of the above High Courts have looked at 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.

42) While there can be no dispute about the principles mentioned in their judgments, their failure to appreciate the above important aspect, does not persuade us to follow their view.

43) Yet another important aspect is that in none of the above decisions rendered by the other High Courts referred to in para 39 (supra) , the decisions of the Delhi High Court in ***Quest Merchandising India Pvt.Ltd and others(3 supra)*** approved by the Supreme Court in ***M/s Arise India*** (4 supra) and in ***M/s Shanti Kiran*** (5 supra) also approved by the Supreme Court in ***Commissioner of Trade and Tax*** (6 supra) were noticed or considered. Had those High Courts been made aware of these decisions, may be they would have taken the same view as the Delhi High Court and the Supreme Court did.

44) Moreover, it is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice (***Laxmipat Singhania v. CIT***[14]***)***. There cannot be dispute that the concept of Input Tax credit is introduced to ensure that there is no burden of double taxation on a tax payer. In ***Mahaveer Kumar Jain v. CIT***[15], the Supreme Court held:

> "***21.*** *Further, in a decision of this Court in* ***Jain Bros. v. Union of India***[16]*, it has been held as under: (SCC pp. 315-16, para 6)*
>
> *"6. It is not disputed that there can be double taxation if the legislature has distinctly enacted it. <u>It is only when there are general words of taxation and they have to be interpreted, they</u>*

[14] AIR 1969 SC 501
[15] (2018) 6 SCC 527 : (2018) 404 ITR 738, at page 532 :
[16] (1969) 3 SCC 311

cannot be so interpreted as to tax the subject twice over to the same tax.... If any double taxation is involved, the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over."

22. *The above referred cases make it clear that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. Now, the only question that remains to be decided is whether in fact there is a specific provision for including the income earned from the Sikkim lottery ticket prior to 1-4-1990 and after 1975, in the income tax return or not. We have gone through the relevant provisions but there seems to be no such provision in the IT Act wherein a specific provision has been made by the legislature for including such an income by an assessee from lottery ticket. In the absence of any such provision, the assessee in the present case cannot be subjected to double taxation."*

(emphasis supplied)

45) We do not find anything in the language of the Act which expressly enables the respondents to tax a purchaser, who has already paid tax to the seller, a second time, by denying him ITC, in all situations. If that were to be so, there would be no concept of giving ITC at all in the Act.

46) We are of the view that the other High Courts have also overlooked this important principle that ITC is introduced to avoid double tax burden on a tax payer under the GST regime. The Parliament, in our opinion, though intended it to be a benefit/concession, it had not intended to punish a tax payer by denying him ITC if the transaction entered into by him with a seller/supplier is bona fide.

47) The view taken by the Delhi High Court in the judgments rendered by it under the DVAT Act, which contain similar provision under

section 9(2) (g), which have been accepted by the Supreme Court, commends to us and we are of the opinion that this is a better way to view the issue and Section 16(2)(c) has to be read down as the Delhi High Court had done. If this issue had been looked at by the other High Courts too mentioned supra in the manner the Delhi High Court had done in the cases under the DVAT Act, while upholding the constitutionality of the provision, maybe they would have read it down as well, in the manner we had done.

48) Reliance placed by the Dy.SGI on the decision of the Supreme Court in ***Chief Commandant of Central Goods and Service Tax and others v. Safari Retreats Pvt.Ltd***[17] is of no avail as validity of Section 16(2) (c) of the Act did not fall for consideration in the said judgment though other provisions i.e Section 17(5) (d) and Section 17(5) (c) of the CGST Act,2017 were considered there.

49) We do not deem it necessary to advert to and discuss all the other judgments cited before us as our view balances the interest of both the tax payer and the State.

50) To complete the narrative, we may point out that this Court in an order dt.16-5-2023 had directed the CGST Department to file an affidavit indicating as to whether any proceeding has been initiated against Respondent no.4 and the outcome thereof, and whether the GST registration of the said respondent still stands or it has been revoked.

51) In reply thereto, on 13.8.2024, the respondents 2 and 3 have filed an affidavit stating that proceedings were initiated against the respondent no.4 under the Act by the Tripura State GST authorities and it was found liable to

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pay Rs.19,74,32,052.63/- on account of tax, interest and penalty under SGST and CGST Acts and an amount of Rs.53,93,605/- each of SGST and CGST was recovered for the period August 2017 to February 2018 and Rs.4,86,901/- towards CGST and Rs.5,86,126/- towards SGST was recovered for the period April, 2018 to August,2018. It is stated that this recovery was done till 6-7-2020.

52) The respondent no.4 has also filed a counter affidavit on 22.8.2023 stating that it's GST registration has been suspended/cancelled since 21.1.2020 and criminal cases have also been filed against it.

53) Importantly, the Assistant Commissioner (Respondent no.3) had invoked only Section 73 of the Act against the petitioner and issued a Show Cause notice to petitioner on 7.1.2021 which resulted in the impugned order dt.17.5.2022. Section 73 lays down the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason *other than fraud or any wilful misstatement or suppression of facts.*

54) The fact that Section 74 of the Act which lays down the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of *fraud or any wilful misstatement or suppression of facts,* is not invoked by respondent No.3 is very significant.

55) Thus the respondents are not disputing that the petitioner did pay the GST of Rs.1,11,60,830/- to respondent no.4, the supplier, though they contend that the latter has not passed over the same to the Government. There is no allegation by the respondents that petitioner had failed to discharge its

liability towards tax on the purchases made by it. It is their case that the respondent no.4 has fraudulently retained the GST paid by petitioner to it.

56) Consequently, it has to be held that the transaction between the petitioner and the respondent no.4 is a bona fide transaction and not a collusive transaction tainted by fraud etc., and that the conduct of respondent no.4 is blameworthy. Petitioner therefore cannot be penalised by invoking Section 16(2) (c) of the Act and denied the ITC.

57) For all the aforesaid reasons, the Writ Petition is partly allowed as under:

(a) Section 16(2) (c) of the Act is held not violative of Art.14, 19(1) (g) or 265 or 300-A of the Constitution of India;

(b) But Section 16(2) (c) of the Act ought not to be interpreted to deny ITC to purchasers in a bona fide transaction like the petitioner and it should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue.

(c) The order dt.7.5.2022 passed by respondent no.3 is set aside.

(d) The respondents are directed to forthwith allow the petitioner ITC to the extent of Rs.1,11,60,830/- denied to it.

(e) No costs.

All pending applications are disposed of.

(S. DATTA PURKAYASTHA, J) **(M.S. RAMACHANDRA RAO, CJ)**