

Part-98-One Pager Snapshot to the Latest Cases on entitlement of ITC as per the provisions of Section 16-Part-I

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S.N.	Case Subject	Case	Held
1.	Seller to be examined in case wherein supply of goods challenged Recovery to be first affected from the seller	D.Y. Beathel Enterprises v. State Tax Officer (Data Cell), Tirunelveli [2021] 127 taxmann.com 80 (Madras)	The Court observed that if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, Court observed that it did not appear that any recovery action has been taken against the seller. Also, assessment of the seller was completed by excluding the subject transactions alone The Court was unable to appreciate the approach of the authorities as when it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. Also further, apart in enquiry in question, seller ought to have been examined and confronted, because respondent had taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices. Thus, impugned orders were quashed and remitted back on account of non-examination of seller and non-initiation of recovery action against the seller the first place.
2.	ITC to be given for transactions entered by the recipient before cancellation of registration of the supplier	LGW Industries Ltd. v. Union of India [2022] 134 taxmann.com 42 (Calcutta)	The writ petition was disposed of by remanding the matters to be considered afresh on the issue of their entitlement of benefit of input tax credit in question. The authorities were directed to consider the documents which petitioners wanted to rely in support of their claim of genuineness of the transactions in question and to consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP). It was further directed that if it is found upon considering the relevant documents that all the purchases and transactions in question were genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit. Similar ratio also followed in Sanchita Kundu v. Assistant Commissioner of State Tax [2022] 142 taxmann.com 576 (Calcutta) and Gargo Traders v. Joint Commissioner, Commercial Taxes (State Tax) [2023] 151 taxmann.com 270 (Calcutta).
3.	In absence of documents, mere reflection of credit in GST Records electronically is not sufficient.	Tvl. Ashok Trading Co. v. State Tax Officer, Inspection Cell-III, Trichy [2022] 141 taxmann.com 227 (Madras)	The Court observed that the petitioner had no documents to substantiate a valid availing of input tax credit and mere reflection of the amounts in the Goods and Service Tax records electronically is not sufficient. If credit is to be allowed and adjusted on such transactions, it would lead to unintended benefits being conferred.
4.	Section 16 to be followed strictly, substantive liability on supplier & protective liability on recipient. Mechanism to brought in place to address the same.	Pinstar Automotive India (P.) Ltd. v. Additional Commissioner [2023] 149 taxmann.com 13 (Madras)	The Court observed that the provisions of section 16 are to be observed strictly, such that, there is no jeopardy to the interests of the revenue. The provisions of the statute has, assimilating wisdom of experience from the erstwhile tax regimes, gone one step further to ensure that the interests of the revenue are protected by providing for a mandate that the tax liability is defrayed/met either at the hands of the supplier or the purchaser, the petitioner in this case. Thus, no fault can be attributed to the revenue in this regard. An additional factor is that where the tax liability has been met by way of reversal of ITC and similarly recovery is effected from the supplier as well, this would amount to a double benefit to the revenue. Thus, while the Department may reverse credit in the hands of the purchaser, this has to be a protective move, to be reversed and credit restored if the liability is made good by the supplier. Thus, the substantive liability falls on the supplier and the protective liability upon the purchaser. A mechanism must be put in place to address this situation.
5.	SCN can be treated as a communication under Section 42(3) intimating mismatch between the ITC claimed by recipient and tax paid by the supplier Supporting document can be furnished in reply to the SCN that tax has been paid	Mahendra Feeds and Foods (Trading Division) v. Deputy Commissioner of GST and Central Excise [2022] 143 taxmann.com 248 (Madras)	It was contended by the revenue that ITC claimed by petitioner was a wrong claim because, there was a complete mismatch between the supplier and the petitioner, as the supplier, in support of its outward tax has not paid the tax or not shown the same in their accounts, as if that they paid the tax. It was contended on behalf of petitioner that under section 42(3) of GST Act there was an obligation on the part of Revenue to communicate to both the supplier and recipient about mismatch of ITC. Once such a communication is issued under the rule in consonance with section 42(3), there must be a procedure to be followed. However, since no such communication was issued and SCN was issued, which has also been responded by the petitioner saying that the supplying dealer has paid the tax, it is a procedural violation. The Court observed that the rectification would be possible at the hands of the petitioner who was the dealer who received the goods by way of input supply, at least at the time of receipt of SCN issued in this regard by the Revenue. After receipt of the SCN, if at all the petitioner wanted to rectify the mismatch, supporting documents to substantiate that output tax had been paid by the supplying dealer should have been procured and filed along with the reply, which they failed to do. Therefore, technical reason that under section 42(3) it should have been communicated at the earliest point of time and therefore SCN cannot be treated as communication intimating mismatch between the supplier and petitioner, cannot be countenanced.