

**Part-99-One Pager Snapshot to the Latest Cases on entitlement of ITC as per the provisions of Section 16-Part-II**

**CA Arpit Haldia**

S.N.	Case Subject	Case	Held
1.	Merely on the ground that in Form GSTR-2A the tax is not reflected, should not be a sufficient ground to deny the claim of ITC.	<b>Diya Agencies v. State Tax Officer [2023] 154 taxmann.com 421 (Kerala)</b>	<b>The Court had observed</b> that if supplier has not remitted the amount paid by the petitioner to him, the petitioner cannot be held responsible. Whether the petitioner has paid the tax amount and the transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence. The petitioner must discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence as mentioned in the Judgment of the Supreme Court in 2023 (3) TMI 533 SC (The State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited). If on examination of the evidence submitted by petitioner, assessing officer is satisfied that claim is bonafide and genuine, petitioner should be given input tax credit. Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of input tax credit.
2.	Section 16(4) is constitutionally valid and is not violative of Articles 19(1)(g) and Article 300-A of the Constitution of India and is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India.	<b>Gobinda Construction v. Union of India [2023] 154 taxmann.com 311 (Patna)</b>	<p><b>-The Court observed</b> that ITC is not unconditional and a registered person becomes entitled to ITC only if the requisite conditions are fulfilled and the restrictions contemplated Section 16(2) do not apply. One of the conditions to make a registered person entitled to take ITC is prescribed Section 16(4). The right of a registered person to take ITC under Section 16(1) becomes a vested right only if the conditions to take it are fulfilled, free of restrictions prescribed under Section 16(2).</p> <p><b>-The Court was</b> of the view that provision under Section 16(4) is one of the conditions which make a registered person entitled to take ITC and by no means it can be said to be violative of Article 300-A.</p> <p><b>-It was argued</b> that there is absence of any rationale behind fixation of a cut-off-date for filing of return. The Court did not find any merit in the submissions so advanced, and outrightly rejected the submission.</p> <p><b>-It was further observed</b> that Fiscal legislation having uniform application to all registered persons and cannot be said to be violative of Article 19(1)(g) of the Constitution and the question of such statutory provision being violative of Article 302 of the Constitution and in teeth of Article 13 of the Constitution of India does not arise at all. The Court further stated that the submission that the requirement of Section 16(4) being directory and not mandatory is not at all tenable in view of the clear language used in Section 16 of the Act. The concession of ITC under Section 16(1) is dependent upon the fulfillment of requisite conditions laid down under various provisions including sub-section (4) thereof.</p> <p><b>-Thus, Court held</b> that Section 16(4) is constitutionally valid and is not violative of Articles 19(1)(g) and Article 300-A of the Constitution of India. The said provision is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India.</p>
3.	Claim of Input Tax Credit raised by the petitioner cannot be sustained when the supplying/selling dealer has not paid up the amounts to the Government; despite collection of tax from the purchasing dealer.	<b>Aastha Enterprises v. State of Bihar [2023] 153 taxmann.com 491 (Patna)</b>	<p><b>-The Court by</b> observing the decision of Apex Court in the matter of The State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited stated that the said decision can be distinguished especially looking at section 70 of the KVAT Act and also petitioner having to produce not only the invoices but also the account details and the documents evidencing transportation of goods. However, this did not absolve the assessee from the rigor provided under Section 16(2)(c). This provision in effect casts a burden of proof on the purchasing dealer who claims ITC, which is a right created under statute; sustained only under the specific terms of the statute.</p> <p><b>-The benefit to</b> claim ITC is one conferred by the statute and if the conditions prescribed in the statute are not complied; no benefit flows to the claimant.</p> <p><b>-The contention of</b> double taxation was negated by the Court since the claim was denied only when the supplier who collected tax from the purchaser failed to pay it to the Government.</p> <p><b>-Further contention</b> raised was regarding measures provided to recover the collected tax, which selling dealer failed to pay to the Government. The mere fact that there is a mode of recovery provided under the statute would not absolve the liability of the tax payer to satisfy the entire liability to the Government. The purchasing dealer being the person who claims ITC could only claim the benefit if the supplier who collected the tax from the purchaser has paid it to the Government and not otherwise.</p> <p><b>-The Government definitely</b> could use its machinery to recover the amounts from the selling dealer and if such amounts are recovered at a later point of time, the purchasing dealer who paid the tax to its supplier could possibly seek for refund. However, as long as tax paid by the purchaser to the supplier, is not paid up to the Government by the supplier; the purchaser cannot raise a claim of ITC under the statute.</p> <p><b>-When supplier</b> fails to comply with the statutory requirement, the purchasing dealer cannot, without credit in his account claim ITC and the remedy available to the purchasing dealer is only to proceed for recovery against the seller. Even if such recovery from the supplier is affected by the purchasing dealer; the State would be able to recover the tax amount collected and not paid to the exchequer, from the selling dealer since the rigor of provisions for recovery on failure to pay up, after collecting tax, enables the Government so to do.</p> <p><b>-Therefore,</b> there should be credit available in the credit ledger of the purchaser to claim Input Tax and otherwise the claim would be frustrated. On the above reasoning, it was held that the claim of ITC raised cannot be sustained when selling dealer has not paid up the amounts to the Government; despite collection of tax from the purchasing dealer.</p>