

## Kerala HC upholds constitutional validity of Section 16(2)(c) and Section 16(4); states retrospective applicability of extended time limit for availing ITC

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## Summary

The Kerala High Court (HC) has upheld the validity of Sections 16(2)(c), which allows credit after payment of tax by the supplier to the Government and Section 16(4) of the Central Goods and Services Tax Act (CGST Act), which provides time limit for availing the ITC. The HC emphasised that statutory conditions, restrictions and time limit form the fulcrum for balancing the grant of ITC and tax collection. It held that ITC is a benefit or concession extended under the statutory scheme which accrues only upon fulfilment of the attached conditions. Furthermore, the HC opined that amendment extending the due date till 30 November of the succeeding financial year is procedural in nature and should be given retrospective effect from FY 17-18 onwards. Consequently, the HC granted the liberty to avail ITC, taking benefit of the prescribed circulars, within one month of the order.

## Facts of the case

- Numerous petitioners in a batch of writ petitions have challenged the constitutional vires of Section 16(2)(c) and Section 16(4) of the CGST Act along with state GST Act.

## Issue before the Madras HC:

- Whether Section 16(2)(c) and Section 16(4) of the CGST/SGST Act infringe the constitutional provisions and are unsustainable?

## Petitioner's contentions

- The petitioners argued that by application of the impugned provisions, genuine input tax credit (ITC) is being denied despite the petitioners having a valid tax invoice, proof of payment of value of goods along with GST paid to the respective supplier and receipt of goods.
- The onus of proving the genuineness of the ITC claimed, which rests upon the recipient, stands fulfilled by having possession of aforementioned documents. Invoking the doctrine of impossibility, the petitioner submitted the requirement to ensure the supplier has

paid the tax is impractical to fulfil given no mechanism under the law.

- It was stated that GSTR 2A is an auto-populated statement based on GSTR-1 filed by the supplier and cannot be edited/modified by the recipient, being merely a read-only document. Accordingly, non-reflection of invoice details due to failure of supplier to furnish correct details resulting in mismatch, cannot be the basis for denying the ITC of the recipient.
- Furthermore, Section 16(2)(c) confers unchecked powers to treat *bona fide* recipients, having proved genuineness, and guilty recipients, who collude with the supplier dealers to claim fraudulent ITC, alike. Accordingly, it violates Article 14 of the Indian Constitution.
- The fact that ITC, which is a vested right, becomes the property of the recipient and depriving the right of property would be in violation of Article 300A of the Indian Constitution.
- The petitioners stated that denial or reversal of eligible credit would affect the business operations of the recipient, which would pertinently be in violation of Article 19(1)(g) of the Indian Constitution.
- Furthermore, denying ITC to the recipient while the government collects the tax

from the supplier results in unjust enrichment, as it leads to double taxation on the same transaction. In the context of time limit specified for availing ITC under Section 16(4), it was argued that such a procedural provision would not take away the substantive right to claim ITC of the recipient.

- Moreover, the returns once filed with late fees and interest cures the procedural lapse and regularises the right to claim ITC.

### **Kerala HC's observations and judgement [WP(C) No. 31559 of 2019, order dated 04 June 2024]**

- **ITC is in the nature of a benefit or concession extended under the statutory scheme:** The HC stated that ITC is a concession or an entitlement and not an absolute right, which accrued only upon fulfilment of the requisite conditions and restrictions attached.
- **Statutory conditions, restrictions and time limit form the fulcrum on which grant of ITC and tax collection are balanced:** The HC highlighted that scheme of GST specifies that only tax collected and paid to the government would be available as ITC. In the absence of Section 16(2)(c), the originating State Government will have to transfer the amount, which has not been received

resulting in revenue loss, thereby rendering the GST law unworkable. Accordingly, such a condition is neither onerous nor unconstitutional. The HC highlighted that the time frame for availing ITC rules out the uncertainty of tax collection and consequent budgetary allocation. Therefore, considering the above, the HC upheld the constitutional validity of the impugned provisions.

- **Amended time limit for availment of ITC shall have retrospective effect:**

The HC observed that owing to the difficulties in the initial stage of GST implementation, the time limit for availing ITC was extended from 20 October to 30 November. It was opined that such amendment is procedural in nature to facilitate and ease the difficulties and should be applicable retrospectively from 01 July 2017. Accordingly, the HC has held that, if a recipient has availed ITC and furnished the return for the month of September till 30 November of the succeeding year for the period from 01 July 2017 to 30 November 2022, such claim should be considered.

The HC also granted liberty to the petitioners to claim benefit of *Circular Nos. 183/15/2022-GST dated 27.12.2022* and *193/05/2023-GST dated 17.07.2023* for mismatch issues within one month from date of order.

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## Our comments

The time limit for availing ITC was extended via Finance Act 2022 from September return of the succeeding year to 30 November of the next year. In a significant judgement, the Kerala HC provided taxpayers an extended window to avail ITC where the return for the September month has been furnished till 30 November, even for the period prior to the enactment of FA 2022. The affected taxpayers can take the benefit of the decision to availing prior ITC claims and potentially challenge any show cause notices issued on similar matter denying ITC taking the benefit of this ruling.

Earlier, on similar issue, Patna HC in Gobinda Construction, Andhra HC in Thirumalakonda Plywoods and Calcutta HC in BBA Infrastructure Limited had also upheld the constitutional validity of the impugned provisions. Notably, the Supreme Court has admitted the SLP against the Patna HC order and has issued notice in the matter.

While the SC final adjudication on the matter remains pending, it is quite likely that the retrospective application of the extended time limit may also be challenged for further deliberation.

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