

Andhra Pradesh HC upholds constitutional validity of GST provisions prescribing time limit for claiming ITC

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Summary

The Andhra Pradesh High Court (HC) has upheld the constitutional validity of provisions under the GST law prescribing time limit for availing input tax credit (ITC). The HC has observed that the ITC is a concession provided by the legislature and not a right, and the legislature has the authority to impose conditions, including a time limit, for claiming ITC. It has also stated that filing the return with a late fee does not extend the time limit for claiming ITC beyond what is prescribed under the GST law.

Facts of the case:

- Tirumalakonda Plywoods (the 'petitioner') is a sole proprietor operating in the hardware and plywood business.
- The petitioner filed the return for March 2020 post the prescribed time limit in November 2020, along with the applicable interest and penalty.
- A show cause notice was issued u/s 74(1) of the CGST Act, denying the eligibility of the ITC claimed in the belated GSTR 3B return.
- Subsequently, the petitioner received an order confirming the demand for irregular ITC, along with interest and penalty.

Petitioner's contentions:

- The petitioner contended that the ITC is a statutory right and imposing a time limit under Section 16(4) of the CGST Act violates Articles 14, 19(1)(g), and 300A of the Constitution.
- The petitioner contended that Section 16(2) of the CGST Act, which contains a non-obstante clause, should prevail over Section 16(4), and when the return is accepted with late fee, the ITC will be eligible without reference to time limit u/s 16(4).
- The petitioner cannot be deprived of the right of the ITC on the sole ground that the claim was made beyond the period prescribed u/s 16(4) of the CGST Act.

Revenue's contentions:

- The Revenue contended that it is incorrect to treat the claim for ITC as an unrestricted legal right. Instead, it is a statutory rebate or concession given to GST taxpayers, as established in previous judgements.
- The Revenue further submitted that the legislature has the authority to impose conditions, including a time limit, for claiming ITC under Sections 16(2) and 16(4) of the CGST Act, 2017. Therefore, these conditions cannot be deemed illegal or unconstitutional.

- The legislature can impose a time limit on claiming the ITC, even though it is a legal right, as demonstrated in the case of Willowood Chemicals Pvt Ltd. v. Union of India. Further, the imposition of late fees for delayed filing is specific to that issue and does not affect other actions prescribed under different GST statutes.

Issues before the AP HC:

- Whether by virtue of imposition of time limit for claiming ITC, Section 16(4) of the CGST Act violated Article 14, 19(1)(g) and 300A of the Constitution, and thereby, is liable to be struck down?
- Whether Section 16(2) of the CGST Act, would prevail over 16(4) of CGST Act, and thereby if the conditions laid down in Section 16(2) of the CGST Act are fulfilled, the time limit prescribed under Section 16(4) of the CGST Act for claiming ITC will pale into insignificance?
- Whether the acceptance of late returns in Form GSTR-3B with a late fee will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4) of the CGST Act.

HC observations and ruling (Writ Petition No. 24235 of 2022, final order dated 18 July 2023):

- **Principal of interpretation should be followed:** The HC, referring to the earlier ruling of the Supreme Court, emphasised that the interpretation of statutes should consider both the text and context. The statute must be read as a whole, and each provision must fit into the scheme of the entire Act. The HC stated that the non-obstante clause in Section 16(2) does not necessarily limit or override the operation of other provisions. The HC noted that Section 16(4) is non-contradictory and capable of clear interpretation, and hence, it is not overridden by the non-obstante provision in Section 16(2).

- **ITC is a concession, not a right:** The HC reiterated that the ITC is a concession or benefit provided by the legislature and not a statutory or constitutional right. Therefore, imposing conditions and time limitations for claiming the ITC is permissible and not a violation of constitutional provisions.
- **Section 16(2) does not override Section 16(4):** The HC emphasised that Sections 16(2) and (4) are two different provisions, each having its specific purpose. Section 16(2) restricts eligibility, while Section 16(4) imposes a time limitation. Both provisions operate independently and are not contradictory.
- **Section 16(4) is constitutionally valid:** The HC upheld the constitutional validity of the time limit prescribed under Section 16(4). The HC emphasised the distinction between the operative spheres of Article 14, 19(1)(g), and 300A of the Constitution of India and Section 16(4) of the CGST Act, 2017.
- **Late filing with fee does not extend ITC claim:** The collection of late fee exclusively relates to the issue of belated filing of return. It would not preclude the action prescribed under Section 61 to 74 of the CGST Act r/w Section 20 of IGST Act. Thus, the HC clarified that filing the return with a late fee does not extend the time limit for claiming the ITC beyond what is prescribed in Section 16(4).

Our comments

Earlier, in the case of Jayam and Co., the Supreme Court had observed that the ITC is a form of concession provided by the legislature. It is trite law that whenever concession is given by statute or notification, etc., the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the assessee to get the benefit of the ITC, but it is a concession granted by the legislature.

The present ruling is in line with earlier jurisprudence and is likely to set precedence in similar matters.

It is pertinent to note that there are many petitions pending before various High Courts challenging the constitutional validity of Section 16(4) of the CGST Act. Recently, the Calcutta HC directed M/s Jyote Motors Bengal Pvt. Ltd. to deposit 10% of the disputed tax amount and listed the matter for August 2023. A similar issue is pending before the Bombay HC in the case of Meta Tiles Pvt. Ltd. and the Gujarat HC in the case of M/s Surat Mercantile Association and others.

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