

Jumbo Trumpets...

Patna High Court returns...

An analysis of the judgment rendered in the case of Gobinda Construction vs UOI and Ors – CWJC No. 9108 of 2021 dt. 08.09.2023

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In yet another judgment, the Patna HC reiterates its strict interpretations of Section 16 of CGST/SGST Acts, 2017. If it was in context of Section 16 (2) before, it proceeds on validity of Section 16 (4) in current judgment.

In a batch of Writ Petitions, the Petitioners challenged the Constitutional validity of Sec. 16 (4) of the CGST Act, 2017, upon being disallowed of the Input Tax Credit (ITC) for belated filing of FORM GSTR-3B beyond the timeframe prescribed under Sec. 16 (4).

As per Sec. 16 (4) the registered person shall not be entitled to ITC in respect of invoice or debit note for supply of goods or services or both after the 30th day of November (post amendment) following the end of financial year to which such invoice or debit note pertains or furnishing of relevant annual return, whichever is earlier.



The HC held that the Sec. 16 (4) is constitutionally valid and not violative of Articles 19(1)(g) and Article 300-A of the Indian Constitution. For upholding the vires of the said provision, the HC gave the reason that Sec.16 (4) is one of the conditions to be satisfied for entitling the registered person to take ITC and for making it a vested right under Sec. 16 (1). The HC presumed the constitutional validity of the provision and defended the position rather examining the merits in the plea of the petitioners.

The HC missed out on the opportunity to provide reasons to petitioners for not reading down the provision despite the elaborate contentions made by the petitioners which ought to have merited consideration.

The various grounds on which the provision was challenged were:

- Sec.16 (4) is confiscatory in nature and the vested right of availing ITC under Article 300A cannot be taken away on the ground of belated filing of return.
- The ITC under Sec. 16 (4) which is in the nature of tax paid at the time of purchase of goods or services is a vested right and should be allowed to be adjusted with the tax payable on the sale of goods or services.
- Procedural requirements under Sec. 16 (4) cannot override the substantial conditions mandated under Sec.16 (1) and (2).
- There is no rationale behind prescribing a cut-off date for filing the return.
- Withholding the amount paid by the purchaser as Input tax amounts to double taxation and constitutes a source of tax once again. Therefore, violates Article 265 of the Indian Constitution.



An alternative plea was also taken to read down the provision by holding that the embargo in the provision should be made applicable to restrict ITC in respect of invoices and debit notes received after the due date prescribed and not belated filing of return.

When it is patent that the denial of ITC for belated filing of return is denial of substantial benefit for a mere procedural lapse, the HC has left the crucial arguments unvaried.

At this juncture it is important to note that, the Andhra Pradesh HC in the case of **Thirumalakonda Plywoods – 2023 (7) TMI 1226** has also upheld the constitutional validity of Sec. 16 (4) by holding that Sec. 16 (2) does not override Sec. 16 (4) despite the non-obstante clause.

Therefore, for availing ITC, complying with conditions laid down under Sec. 16 including Sec. 16 (4) remains unvaried.

There are larger questions to be addressed while deciding the issue as to whether return is only a declaration of liabilities and set offs or is it the document for availing credit. If so, what is the relevance of an electronic credit ledger in for PMT 02. The electronic credit ledger is invariably linked to GSTR 3B that when same is not filed ledger is not updated. Therefore, even when credit is availed properly on time in the books of the assessee, in absence of facility to update PMT 02 on real time basis, the reflection of such ITC availed in books on time is being reflected in ledger only with filing of GSTR 3B.



Even during the legacy regime, as per sub rule 2 of Rule 9 of the Cenvat Credit Rules, 2004 provided that even if the particulars in tax invoice is insufficient if such goods or services covered in the invoices are received and accounted for **IN THE BOOKS OF ACCOUNT** of the receiver, credit can be allowed. A deviation from this principle, though intended to enforce timely compliance, is an unfair deal to the assesees.

Moreover, with filing of GSTR 3B return, if the liability dates back to date of time when such return ought to have been filed, what is the basis of delinking credit from such month and treating the same as availed only during the month when return is filed. This further points to the attitude of having only revenue collection in mind and denial of even their due benefit to the assesees. Unfortunately, these practical issues were not highlighted in the earlier judgment of Andhra Pradesh HC nor before the Patna HC.

Another fall off of such decisions is that same would command a value more than persuasive before High Courts of other States, who, as a matter of convenience would follow the judgment. Only when judicial minds have a compliance oriented exposure to this new law, the assesees can expect any redressal of their grievance in a judicious manner.

The justification for the unreasonableness behind Sec. 16(4) will see the light of the day only when the courts are all ears to hear the valid contentions of the taxpayers with a view to understanding the genuine claim and until then the taxpayers must live to fight another day.

