



Andhra Pradesh High Court upholds Constitutional validity of Section 16(4) of the CGST Act

Thirumalakonda Plywoods vs. The Assistant Commissioner -State Tax & Ors¹

The Andhra Pradesh High Court ('High Court'), by its order dated July 18, 2023, upheld the constitutional validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), thereby affirming that the time limit to avail Input Tax Credit (ITC) is not ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India.

Facts of the case:

- The Petitioner was engaged in hardware and plywood business that commenced during March 2020. In the wake of Covid-19 pandemic the Petitioner could not file Form GSTR-3B of March 2020 in time and so filed it, belatedly, on November 27, 2020, along with late fees.
- A notice was issued under Section 74(1) of the CGST Act, followed by an order confirming the demand, i.e. disallowing ITC availed by the Petitioner, in the belatedly filed GSTR-3B, on the ground that Section 16(4) of the CGST was not complied with.
- Section 16(4) of the CGST Act stipulates the time limit within which the eligible ITC can be availed. In

other words, any claim made after the prescribed date shall not be valid.

- Against the said order, a writ petition was filed before the High Court assailing the validity of Section 16(4) of the CGST Act on, *inter-alia*, the following grounds:
 - Time limit for claiming the ITC under Section 16(4) is ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India.
 - Section (16)(2) of the CGST Act prevails over Section 16(4) meaning thereby, if the conditions laid down in the Section 16(2) are complied with, the time limit prescribed in Section 16(4) would become irrelevant.
 - As the belated return in Form GSTR-3B along with late fees has been accepted, the Petitioner cannot be deprived of the right to avail ITC merely on late filing of the return.
 - Effectively, the ITC deserves to be allowed to the Petitioner.
- The High Court dismissed the writ petition and upheld the constitutional validity of Section 16(4), on the following reasoning:

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- ITC is a concession/ benefit and not a statutory or constitutional right. The Legislature has the right to impose certain conditions including time prescription for availing such benefits and the same cannot be challenged on the grounds of violation of constitutional provision. Support was found in decisions in case of **Jayam and Co. vs. Assistant Commissioner**², **USA Agencies vs. The Commercial Tax Officer**³ **Automotive Pvt. Ltd vs. Commercial Tax Officer**⁴
- Thus, imposition of any condition for availing ITC does not constitute violation of constitutional right.
- Section 16(1) prescribes entitlement of ITC, while Section 16(2) of the CGST Act (commencing with non-obstante clause) specifies the conditions to be fulfilled in order to avail such ITC; and it has to be construed in the context for which it is used. Thus, it is evident that to be eligible to claim ITC, conditions prescribed in Section 16(2) are prerequisites; strictly construed, Section 16(2) – a restricting provision - limits and constrains the eligibility, which is given under Section 16(1) of the CGST.
- Section 16(2) provides eligibility conditions for claiming ITC while Section 16(4) imposes time limitations within which such eligible ITC can be claimed. Thus, these Sections are independent of each other and are to be applied collectively. It can in no manner be construed that Section 16(2) overrides or controls Section 16(4). It is observed that these two sub-sections are *“are mutually different and both will operate independently”*
- Usually, non-obstante clauses are used to give an overriding effect to certain contradictory

provisions in the statute. Section 16(2) and 16(4) being clear and capable of independent interpretation cannot be adjudged as contradicting. Reliance was placed on many judgements including that of **Union of India vs. G M Kokil & Ors.**⁵

- Collection of late fees for delay in filing returns is for admitting the returns for verification, and it can in no manner stifle the statutory limitation imposed under Section 16(4) of the CGST Act.

Dhruva Comments

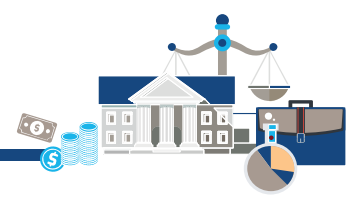
Constitutional validity of Section 16(4) has been challenged in various High Courts of India. Andhra Pradesh High Court is the first court to rule on the issue, and whilst doing so affirms the position that if Form GSTR-3B return is not filed within the time specified in Section 16(4) of the CGST Act i.e., 30th November (earlier 20th October), ITC claimed therein will not be available to the taxpayer.

² 2016 (15) SCC 125

³ 2013(5) CTC 63

⁴ 2019 13 SCC 225

⁵ 1984 (supp) SCR 196





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