



Patna High Court upholds constitutional validity of Section 16(4) of the CGST Act

Gobinda Construction vs. Union of India¹

Constitutional validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act') has been challenged in various High Courts of India. **Andhra Pradesh High Court in the case of Thirumalakonda Plywoods vs. the AC, State Tax & Ors.**² was the first to rule on this issue and while doing so affirmed the position that Input Tax Credit (ITC) being a benefit and not a statutory right, the legislature has the right to impose certain conditions including time prescription for availing such benefit and the same cannot be challenged on the grounds of violation of constitutional provisions.

Thus, 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 September), benefit of ITC shall not be allowed to the taxpayer.

Now, Patna High Court ('the Court'), by its order dated September 8, 2023, held that the time limit to avail ITC is not ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India.

Issue for consideration:

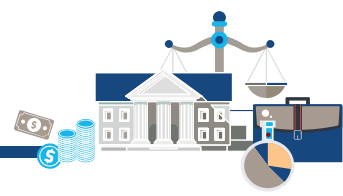
- The question for the consideration before the Court was whether ITC *per se* is a vested right and the denial of which by operation of Section 16(4) of the

CGST would amount to infringement of the constitutional right under Article 300A of the Constitution.

- The said petition was submitted with the following grounds:
 - ITC is a vested right under Article 300A of the Constitution of India and such protected and vested right cannot lightly be taken away on the ground of belated filing of return.
 - The said provision would apply to restrict claim of ITC in respect of only such invoices or debit notes that are received after the end of the financial year beyond September of the preceding financial year, and not on such ITC claimed in a belated return filed after such date.
 - Form GSTR-3B cannot be treated as return prescribed under Section 39(1) as it does not satisfy the parameters of a return as contemplated under Section 39(1) of the CGST Act, even after retrospective amendment.

¹2023 (9) TMI 902

²2023 (7) TMI 1226



- The Court dismissed the writ petition and upheld the constitutional validity of Section 16(4), with the following reasoning:
 - Provision of Section 16(4) is one of the conditions which makes a registered person entitled to take ITC and by no means it can be said to be violative of Article 300A of the Constitution of India.
 - There is always a presumption of constitutional validity of a legislation. Moreover, legislation having uniform application to all registered persons, cannot be said to be violative of Article 19(1)(g) of the Constitution of India.
 - Reliance was placed on the Apex Court's decision in the case of *Jayam and Company vs. Assistant Commissioner & Anr*³ wherein it was held that whenever concession is granted by the statute, the conditions thereof are to be strictly followed.
 - Thus, the said provision is not in derogation with any of the fundamental rights guaranteed under the Constitution of India and, is constitutionally valid but not violative.

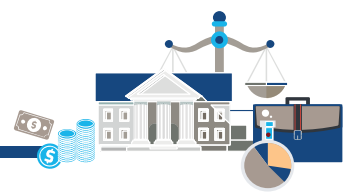
Dhruva Comments

Constitutional validity of Section 16(4) has been upheld by another High Court.

Interestingly, no analysis is available in the judgement regarding the petitioner's argument that Form GSTR-3B cannot be treated as a return under Section 39(1).

None of the judgments have addressed the issue as whether "take ITC" as appearing in Section 16(4), refers to availment in the books of account or Form GSTR-3B, of the taxpayer. This issue deserves to be addressed, since it will imply that a taxpayer who has availed the ITC in his books of account but, not in the Form GSTR-3B (in the timelines prescribed), could contend satisfaction of the requirements to enjoy ITC.

³2016 (9) TMI 408



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