

GAHC010175622022



2025:GAU-AS:16974-DB

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

WP(C) No.5725 of 2022

M/s MCLEOD Russel India Limited, a public limited company incorporated under the provisions of the Companies Act, 1956 having its registered Office at Dirai Tea Estate, PO: Moran, Dibrugarh, Assam – 785669 and in the present proceedings represented by Shri Tridip Majumdar, the Deputy General Manager – Taxation of the petitioner Company.

.....Petitioner

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi – 110001.

2. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Assam Secretariat, Dispur, Guwahati – 781006.

3. The Commissioner, Central Goods & Service Tax, Guwahati, Central GST Hqrs, Guwahati, GST Bhawan, Kedar Road, Machkhowa, Guwahati – 781001.

4. The Commissioner of State Taxes, Assam, Kar Bhawan, Ganeshguri, Guwahati – 781006.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY**

For the Petitioner : Mr. A. Kanodia, Advocate.
(*through video-conferencing*)

For the Respondent(s) : Mr. S.C. Keyal, Standing Counsel, CGST for respondent No.3.
: Ms. R. Hussain, Advocate.

Date of judgment : ***9th December, 2025.***

JUDGMENT & ORDER (ORAL)

(Ashutosh Kumar, CJ)

The petitioner, a Public Limited Company, engaged in the business of production, blending and supply of tea in India and other countries, has questioned the validity of the provisions contained in Section 16(2)(aa) of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as the “CGST Act”) and Assam Goods and Services Tax Act, 2017 (hereinafter to be referred as the “AGST Act”).

2. The provision of Section 16 of the CGST Act, in its entirety, is being extracted herein below for ready reference:-

“16. Eligibility and conditions for taking input tax credit.— (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.

(b) he has received the goods or services or both.

[Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the

value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

3. According to Mr. A. Kanodia, learned Advocate for the petitioner, Clause (aa) of sub-section (2) of Section 16 of the CGST Act and AGST Act puts an arbitrary condition that the Input Tax Credit (hereinafter to be referred as "ITC") would be available to a purchaser, subject to the condition that the supplier has furnished the details of the invoice or debit note issued to the purchaser for the supply of goods or services, in his return in GSTR-1 and the details of such invoice or debit note is communicated to the purchaser, namely, the recipient, in the manner by which the details of outward supplies are furnished in GSTR-1 as prescribed under Section 37 of the CGST Act and AGST Act.

It is contended that the fulfillment of the conditions, stated above, cannot be done by the purchaser as Section 37 does not provide

any mechanism for such communication to be made by the supplier to the recipient, namely, the purchaser. This provision restricts the ITC of a *bona fide* tax payer due to default of the supplier to file his return in GSTR-1.

4. Thus, in sum and substance, Section 16(2)(aa) of the CGST Act and AGST Act restricts the vested right of claiming ITC of a *bona fide* tax payer, namely, the recipient, due to the default of its supplier to furnish the details of invoices or debit notes of such supply in GSTR-1 return. The denial of the ITC to the genuine tax payers, irrespective of the fact that the recipient has already paid the tax to the supplier, is thus clearly arbitrary and irrational.

5. There could be myriad reasons/instances where the supplier may not file his return in GSTR-1 timely; or does not furnish the details of invoice; or debit note of such supply correctly for which an honest/*bona fide* tax payer (may be purchaser) ought not to be denied his ITC. It imposes an impossible burden on the purchaser to verify the details furnished by the supplier in his outward supply statement in Form GSTR-1 and the auto-population of such details in the recipients GSTR-2A/GSTR-2B. Currently, the laws in practice pertaining to goods and services taxes do not provide the purchaser with any such mechanism to take any action or non-disclosure of the invoice in the outward supply statement in Form GSTR-1 by the supplier though tax has been correctly paid by the supplier in his GSTR-3B payment return, thereby making the denial of ITC on account of non-reflection of invoice in GSTR-2A/ GSTR-2B under the said Clause to be arbitrary. Thus, the provision required in the alternative to be

read down if not held to be unconstitutional.

6. Looked at from another angle, denying the ITC to a buyer of goods or services for default of supplier of goods and services would amount to shifting the incidence of tax from the supplier to the buyer which is unconstitutional and against the scheme of CGST Act and AGST Act. A buyer of goods or services would have to pay GST twice on the same transaction; once at the time of purchase of the goods by paying GST to the supplier and secondly, on disallowance of the ITC.

7. The objective of the CGST Act and the AGST Act is to charge tax only on “value additions” and to avoid a cascading effect of taxes.

8. The Central Board of Indirect Taxes and Customs (CBIC) vide Circular No.183/15/2022-GST dated 27.12.2022 and Circular No.193/05/2023-GST dated 17.07.2023 had made an arrangement up-to 31.12.2021 to allow ITC to recipients where ITC details were not uploaded or correctly reported in Form GSTR-1 by the supplier, thereby causing non-reflection in Form GSTR-2A as it existed up-to 31.12.2021.

There cannot be any rational of such mistake not occurring even after 01.01.2022.

9. It is thus, in the alternative prayed that the contents of the aforesaid CBIC Circulars should be made applicable for the period on or after 01.01.2022.

10. In support of his claim, the petitioner has referred to the judgments in ***Suncraft Energy Private Limited & Ors. -Vs- The Assistant Commissioner, State Tax, Ballygunge Charge & Ors :: (2023) 117 GSTR 78***

(Cal), which judgment was affirmed by the Supreme Court [reported in **(2024) 121 GSTR 230**] and **Diya Agencies -Vs- STO :: (2024) 124 GSTR 172** (Kerala High Court).

In **Commissioner Trade and Tax, Delhi -Vs- M/s Shanti Kiran India (P) Limited [Civil Appeal No(s).2042-2047/2015]**, the Supreme Court affirmed the decision of the Delhi High Court, whereby the benefit of ITC was made available to the registered purchaser/ dealer, who had paid taxes to the registered seller/ dealer in terms of invoices raised by them even though those sellers did not deposit the collected tax with the Government. The Delhi High Court had found that the purchaser had paid taxes in good faith to the seller and, therefore, was entitled to the benefit of ITC.

The benefit was allowed to the purchaser subject to due verification of invoices.

11. The Supreme Court, while affirming the afore-noted decision of the Delhi High Court, also took note of the decision in **On Quest Merchandising India Private Limited -Vs- Government of NCT of Delhi & Ors. :: 2017 Scc OnLine (Delhi) 13037** in the context of provisions of Section 9(2) (g) of the Delhi Value Added Tax Act, 2004, where also the provision was read down in order to benefit a bona fide purchaser who was entitled for ITC.

12. Mr. S.C. Keyal, learned Advocate for respondent No.3/ Commissioner, CGST, Guwahati, opposing the afore-noted contentions, submitted that the law provides for placing conditions and restrictions on the entitlement of ITC. He submitted that ITC could be availed by a

registered recipient on his eligibility and entitlement criteria laid down under the law, including those mentioned in Section 16(1) & 16(2) of the CGST Act, 2017. According to Mr. Keyal, it does not discriminate against any class of registered persons. 4(four) conditions are to be satisfied by a registered taxable person for availing ITC as per Section 16(2) of the CGST Act, 2017, namely, **(i)** he should be in possession of tax invoice or debit note or such other taxing documents, as may be prescribed; **(ii)** that he has received goods or services or both; **(iii)** the supplier has actually paid the tax charged in respect of the supply to the Government, and **(iv)** that he had furnished the return under Section 39.

13. Thus, unless the supplier has paid the tax in respect of the said supply, ITC cannot be claimed by the recipient on the said supply.

14. The purpose of inserting Section 16(2)(aa) into the CGST Act is to mandate a stricter condition for availing ITC. It actually ties the recipient's ability to claim ITC directly to the supplier's compliance with their GST filing obligations. This amendment was introduced to address tax evasion and improve the transparency and integrity of the GST system. Thus, the purpose and rationale is to prevent fraudulent ITC claims, to promote supplier compliance and eliminate provisional ITC, which has proved to be effective in curbing fraudulent claims. There is no reason why it should be declared unconstitutional or should be read down in any manner whatsoever.

15. After hearing the learned counsel for the parties, we are of the view that a tax imposed by the Government is a tax on the buyer; making the seller a mere collecting agency, so that the tax must always

remain outside the sale price.

16. The law is well settled that a person, who claims exemption or concession, has to establish that he is entitled to that exemption or concession.

17. Section 16(2)(aa) puts a condition on such exemption or concession, namely, the compliance by the seller over which a buyer may or may not have any actual control.

The object and purpose of GST Act is to avoid any cascading effect of taxation.

18. True it is that any exemption available in the taxing regime is dependent on certain conditions and the conditions are required to be complied with.

19. In the present case, the conditions are that the GSTR-2 Form should reflect the payment of tax/invoice, which may or may not have been paid or correctly uploaded. Merely because of this, the ITC benefit to a *bona fide* buyer cannot be avoided as that would be against the object and purpose of the Act itself.

20. In our estimation, the restriction is quite iniquitous because an onerous burden is placed on purchasing dealer. However, since the object and purpose of the amendment in the Act is to prevent fraudulent ITC claims and to promote supplier compliance, we are not inclined to hold the amendment in Section 16 to be unconstitutional but for the present, we only read it down to the extent that in case of the supplier acting truant, before denying the ITC benefits to a *bona fide* purchaser,

he ought to be given an opportunity to prove his *bona fides*, which can be verified by the tax invoices and other documents.

21. We have read down this provision only till the time CBIC comes out with any practical solution to the problem posed by making the availability of ITC to the *bona fide* purchaser contingent on factors which are totally in the hands of a supplier and not the purchaser.

22. The petition stands disposed off accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant