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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.4917 OF 2021 (T-RES)

BETWEEN:

M/S INSTAKART SERVICES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
BUILDINGS ALYSSA, BEGONIA & CLOVER EMBASSY
TECH VILLAGE
OUTER RING ROAD,
DEVARABEESANAHALLY VILLAGE
VARTHUR HOBLI
BENGALURU – 560 103
THROUGH ITS AUTHORISED
REPRESENTIVE MR SIMHADRI C N

...PETITIONER

(BY SRI. TARUN GULATI, SENIOR COUNSEL FOR
SRI KISHORE KUNAL, SRI. RUNJHUN PARE &
SRI. PRADEEP NAYAK, ADVOCATES)

AND:

1. THE UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
CENTRAL SECRETARIAT,
NORTH BLOCK, NEW DELHI-110001
REPRESENTED BY THE SECRETARY

2. THE CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
NORTH BLOCK, NEW DELHI - 110 001
THROUGH ITS CHAIRMAN

Retyped and replaced vide Court order dated 07.04.2026

3. THE GOODS AND SERVICE TAX COUNCIL
OFFICE OF THE GST COUNCIL
SECRETARIAT
5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
DELHI – 110 001

4. THE PRINCIPAL COMMISSIONER OF CENTRAL TAX
BENGALURU EAST
C R BUILDING, QUEENS ROAD,
BENGALURU – 560 001.

5. THE STATE OF KARNATAKA
FINANCE DEPARTMENT
255, VIDHAN SOUDHA
BENGALURU – 560 001
THROUGH THE
ADDITIONAL CHIEF SECRETARY

…RESPONDENTS

(BY SRI. MADANAN PILLAI, CGC FOR R1;
SRI. M.UNNIKRISHNAN, ADVOCATE FOR R2, R3 & R4;
SRI. HEMA KUMAR, AGA FOR R5)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE SECTION 16(2) (c) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017 ANNEXURE-A AS NULL AND VOID AND HOLD IT TO BE UNCONSTITUTIONAL BEING VIOLATIVE OF ARTICLES 14 AND 19(1)(g), ARTICLE 265 AND ARTICLE 300A OF THE CONSTITUTION OF INDIA AND STRIKE DOWN THE SAME, ETC.,

THIS PETITION, COMING ON FOR *FURTHER HEARING*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

" (a) Issue a Writ, order or directions in the nature of declaration or any other writ, order or direction of like nature to declare Section 16 (2) (c) of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 [Annexure A] as null and void and hold it to be unconstitutional being violative of Articles 14 and 19 (1) (g), Article 265 and Article 300A of the Constitution of India and strike down the same;

(b) Alternatively, issue a Writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, Order or directions, reading down Section 16(2) (c) of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 in such a manner which allows the benefit of ITC to bona fide recipients such as the Petitioner which has complied with all the other conditions under Section 16 (2) of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 despite any fault/lapse or non-payment of tax to the Government by the suppliers;

(c) Issue a Writ, order or directions in the nature of declaration or certiorari or any other writ, order or direction of like nature to declare Rule 36 (4) of the Central Goods and Services Tax Rules, 2017 and Karnataka Goods and Service Tax Rules, 2017 [Annexure B] as null and void and hold it to

be ultra vires the Central Goods and Services Tax Act, 2017 and Karnataka Goods and Services Tax Act, 2017 as also declaring the same as unconstitutional being violative of Articles 14 and 19 (1) (g), Article 265 and Article 300A of the Constitution of India and strike down/quash the same;

(d) Issue a Writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, Order or directions, directing the Respondents not to proceed against the Petitioner in terms of the Impugned Provisions;

(e) issue a Writ of mandamus or any other appropriate writ, order or direction restraining the Respondents, their subordinates, servants and agents from in any manner whatsoever raising demands or from taking coercive action for enforcing the Impugned Provisions against the Petitioner;

(f) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. The petitioner is a private limited company incorporated under the Companies Act, 1956, and is registered under GST Enactments in the State of Karnataka. The petitioner is engaged *interalia* in the business of providing logistic services to various sellers, who undertake sale transactions through online market place of M/s.Flipkart Internet Private Limited and the logistic

services providing by the petitioner including packaging freight delivery and end-to-end logistic support to customers including warehousing services to store the goods which are sold by the said sellers to their respective customers. The petitioner has also obtained registration under CGST Act and SGST / UTGST Acts of respective states and Union territories, in which it operates and while the petitioner operates in various states and Union Territory across India, the Registered office of the petitioner and its principal place of business in the State of Karnataka is at Bangalore.

3. The petitioner has filed the present petition challenging the Constitutional validity of Section 16(2)(c) of the CGST / KGST Act and Rule 36 (4) of the CGST / KGST Rules on various grounds / contentions including *interalia* contending that the impugned provisions cast an impossible burden on the recipients of the Input-Tax Credit (ITC) viz., to ensure payment of tax by the suppliers and ensuring timely filing of the returns by the supplier which is clearly beyond the control of the petitioner and similarly placed recipients. It is also contended that the impugned provisions are in contraventions of the very scheme of the Act, since they seek to shift the entire onus on the recipients of the goods or services or

both including the obligation which is cast on the suppliers, thereby rendering the impugned provisions as manifestly arbitrary and falling foul of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India. Alternatively, petitioner has prayed for reading down of the aforesaid impugned provisions of the CGST / KGST Act in such a manner that allows the benefit of ITC to bonafide recipients such as, the petitioner which has complied with all other conditions under Section 16(2) of the CGST / KGST Act despite any fault / lapse or non-payment of tax to the Government by the suppliers. It was therefore contended that the petition deserves to be disposed of accordingly.

4. Heard learned Senior Counsel for the petitioner and learned counsel for the respondents as well as learned AGA and perused the material on record.

5. In addition to reiterating the various contentions urged in the petition and rejoinder / reply filed by the petitioner and the material on record, learned Senior Counsel for the petitioner submits that the impugned provisions are manifestly arbitrary, ultravires and unconstitutional falling foul of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India. It was submitted that

bonafide purchasers / recipients of goods and services such as the petitioner cannot be penalized for fault of suppliers / vendors and ITC cannot be denied merely because of the fault of the supplier without verifying the genuineness of the transactions of the recipients. It was also submitted that it was impermissible in law to compel a person to do the impossible and such impossible conditions need not be complied with or followed by the petitioner since the said unforeseen circumstances were beyond the control of the petitioner and similarly placed assessees. It was further submitted that genuine tax credit payable / available in favour of the petitioner and similarly / identically situated persons was a vested right and indefeasible right and the same cannot be taken away due to the lapses / faults of the supplier.

5.1 Learned Senior Counsel would alternatively submit that various High Courts have read down the impugned provisions in such a manner that allows the benefit of ITC to bonafide recipients such as, the petitioner which has complied with all other conditions under Section 16(2) of the CGST / KGST Act despite any fault / lapse or non-payment of tax to the government by the suppliers and as such, the present petition deserves to be allowed and

disposed of in favour of the petitioner. In support of his submissions, learned Senior Counsel would rely upon the following judgments:

1. ***Commissioner Trade and Tax Delhi vs. Shanti Kiran India (P) Ltd., (2025) 25 Centax 222 (SC)***
2. ***National Plasto Moulding vs. State of Assam, (2024) 21 Centax 182(Gau)***
3. ***On Quest merchandising India Pvt.Ltd. vs. Uol, 2018 (10) GSTL 182 (Del)***
4. ***CTE vs. Arise India Ltd., 2022 (60) GSTL 215 (SC)***
5. ***Jain Steels & Alloys Mfrs. vs. CCT, 2019 SCC OnLine Kar 3943***
6. ***Onyx Designs vs. Asst. Commr. Of C.T., (2019 67 GSTR 209***
7. ***State of Karnataka vs. Rajesh Jain, 2016-VIL-701 KAR***
8. ***Mukand Ltd. Vs. State of Karnataka , 2018-VIL-82-KAR***
9. ***On Quest Merchandising India Pvt.Ltd., vs. Uol,2018 (10) GSTL 182 (Del)***
10. ***CTE vs. Arise India Ltd, 2022 (60) GSTL 215 (SC)***
11. ***Gheru Lal Bal Chand vs. State of Haryana, [2013] 29 Taxmann.com 484 [P&H]***
12. ***M/s. Tarapore & Co. vs. State of Jharkhan, 2029 SCC OnLine Jhar 1918***
13. ***Chunni Lal Parshadi Lal vs. Commissioner of Sales Tax, UP (1986) 2 (SCC) 501***

14. *Govindan & Co vs. The Sate of Tamil Nadu, (1975) 35 STC 50 (Mad.)*
15. *Sri vinayaga Agencies vs. Asst. Commr. (CT), 2013 SCC OnLine Mad 323*
16. *Bharat Steels vs. Commercial Tax Officer, 2015 SCC OnLine Mad 9136*
17. *Infiniti Wholesale Ltd. V. Assistant Commissioner, (2015) 82 VST 457*
18. *Assistant Commissioner vs. Infiniti Wholesale Ltd., [2017] 99 VST 341 (Mad)*
19. *Bharat Steel v.Commercial Tax Officer, 2015 SCC OnLine Mad 9136*
20. *Infiniti Wholesale Ltd. V. Assistant Commissioner, (2015) 82 VST 457*
21. *Assistant Commissioner vs. Infiniti Wholesale Ltd., [2017] 99VST 341 (Mad)*
22. *Commissioner of Central Excise, Jalandhar v. Mahajan Steel and Allied Industries, 2009 SCC OnLine P&H 6941*
23. *Shree Yarns vs. Assistant Commissioner, 2017 SCC OnLine Mad 5730*
24. *Lawrance Livingston vs. Commercial Tax Officer, 2019 SCC OnLine Mad 10993*
25. *R.S.Infra Trasmission Ltd., v. State of Rajasthan, 2018 SCC OnLine Raj 3587*
26. *The State of Madras vs. Radio and Electricals Ltd., and Anr, 1966 SCC OnLine SC 132*
27. *Commissioner of Central Excise, Jalandhar vs. M/s. Kay Kay Industries, 2013 (295) ELT 117*

28. *Indsur Global Ltd vs. UOI, 2014 (310) ELT 833 (Guj)*
29. *Computer Consultants vs. Assistant Commissioner (CT), Hosur (South) Assessment Circle Ors., WP 305 TO 208 OF 2016*
30. *D.Y.Beathel Enterprises vs. State Tax Officer (Data Cell) 2022 (58) G.S.T.L. 269 (Mad)*
31. *Sanchitha Kundu 7 Anr vs. The Assistant Commissioner of State Tax, Bureau of Investigation, south Bengal Ors. 2022 (63) GSTL 413 (Cal.)*
32. *LGW Industries vs. Union of India, (2023) 4 Centax 373 (Cal.)*
33. *Asst. Commr. State Tax vs. Suncraft Energy Pvt Ltd., (2023) 13 Centax 189 (S.C.)*
34. *Balaji Exim vs. Commissioner of CGST, (2023) 5 Centax 41 (Del.)*
35. *Hanuman Industrial Corporation vs. Govt of NCT of Delhi, (2024) 22 Centax 18 (Del.)*
36. *R.N. Garg and Sons vs Union of India, (2024) 21 Centax 453 (Del.)*
37. *APN Sales and Marketing vs. Union of India, (2024) 22 Centax 218 (Del.)*
38. *Bright Star Plastic Industries vs. Additional Commissioner of Sales Tax (Appeal),2022 (57) GSTL 226 (Ori)*
39. *National Plasto Moulding vs. State of Assam, (2024) 21 Centax 182 (Gau)*

40. *Indian Seamless Steel and Alloys Ltd. Vs. Union of India, 2003 (156) ELT 945 (Bom)*
41. *Hico Enterprises v. CC, 2005 (189) E.L.T.135 (T-LB)*
42. *CC.V.Hico Enteprises 2008 (228) E.L.T 161 (S.C)*
43. *SKH Sheet Metal Component vs. UOI 2020 (38) G.S.T.L 592 (Del.)*
44. *CCE, Pune vs. Dai Ichi Karkaria Ltd., 1999 (112) ELT 353 (SC)*
45. *Shabnam Petrofils Pvt.Lts. vs. Union of India 2019 (29) G.S.T.L.225(Guj)*
46. *Jayam and Co. vs. Assistant Commissioner and Anr. 2016 (15) SCC 125*
47. *Union of India vs. Adfert Technologies Pvt.Ltd., (2020) 115 taxmann.com 29 (SC)*
48. *Adfert Technologies Pvt.Ltd., vs. UOI, 2020 (32) GSTL 726 (P&H)*
49. *Eicher Motors Ltd vs. UOI, 1999(106) ELT 3*
50. *R.L.Enterprises vs. Commissioner State Goods and Services Tax Delhi (2024) 23 Centax 237 (Del.)*
51. *Himalaya Communication Pvt.Ltd., vs. Union of India (2025) 31 Centax 329 (H.P)*
52. *CCE, East Singhabhum vs. Tata Motors Ltd., 2013 (294) ELT 394 (Jhar)*
53. *Commr of C.Ex.Cus. & ST vs. Juhi Alloys Ltd., 2014 (302) ELT 487 (All)*
54. *Best Corp Science Pvt.Ltd., vs. Principal Commissioner CGST Commissionerate, (2024) 22 Centax 531 (DeL)*

55. *Commissioner Trade and Tax, New Delhi vs. Shanti Kiran (P) Ltd., (2025) 35 Centax 222 (S.C.)*
56. *R.T.Infotech vs. Additional Commissioner, Grade 2 (2025) 31 Centax 204 (All)*
57. *Lokenath Construction Pvt.Ltd., vs. Tax/ Revenue Government of West Bengal, (2024) 18 Centax 97 (Cal)*
58. *Siddharth Enterprises vs. Nodal Officer, 2019 929) GSTL 664*
59. *Kunj Behari Lal Butail vs. State of H.P.(2000) 3 scc 40*
60. *Global Energy Pvt.Ltd., vs. Central electricity Regulatory Commissioner, (2009) 15 SCC 570*
61. *Petroleum and Natural Gas Regulatory Board vs. Indraprastha Gas Limited, (2015) 9 SCC 570*
62. *Bimal Chadnra Banerjee vs. State of M.P., 1970(2) SCC 467*
63. *Uol vs. Intercontinental Consultants and Technocrafts Pvt.Ltd., (2018) 4 SCC 669*
64. *Indian Express Newspaper (Bombay) Pvt.Ltd., vs. Uol, (1985) 1 SCC 641*
65. *Babaji Kondaji Garad vs. Nasik Merchants Co-operative Bank Ltd., (1984) 2 SCC 50*
66. *Gupta modern Breweries vs. State of J&K, (2007) 6 SCC 317*
67. *Cellular Operators Association of India vs. T.R.A.I, 2016(7) SCC 703*
68. *Deputy Commissioner of Income Tax v. Pepsi Foods Limited, (2021) 7 SCC 413*

69. Devarsh P.Patel v. Deputy Commissioner of Income Tax-2018 (9) TMI 1635 (Guj)

70. Kartik Vijay Sonavane v. Deputy Commissioner Income Tax 2021 (11) TMI 682 (Guj)

71. Assistant Commissioner of Income Tax v. Om Prakash Gattani -242 I.T.R 638 (Gauhati)

6. Per contra, learned counsel for the respondents would reiterate the various contentions urged in the statement of objections and submit that there is no merit in the petition and the same is liable to be dismissed.

7. I have given my anxious consideration to the rival submissions and perused the material on record.

8. The question that arises for consideration in the present petition is as to whether the impugned provisions contained in Section 16(2)(c) of the CGST / KGST Act and Rule 36(4) of the CGST / KGST Rules are unconstitutional, invalid and *ultravires* the provisions of the said Acts and violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India or whether the impugned provisions are to be read down in such a manner which allows the benefit of ITC to bonafide recipients such as the petitioner, which

has complied with all the other conditions under Section 16(2) of the CGST / KGST Act despite any fault / lapse or non-payment of tax to the government by the suppliers.

9. While dealing with the provisions of the Karnataka Value Added Tax Act, 2005, the Hon'ble Division Bench of this Court in ***Rajesh Jain's*** case supra, held as under:

> *" 7. The aforesaid shows that the finding of fact has been recorded by the Tribunal that the assessee has fully discharged the burden of proof to claim the deduction of input tax as per the tax invoices. The aforesaid finding, in view of the evidence produced and referred to hereinabove by the Tribunal, cannot be said to be perverse. Hence, the question needs to be answered in favour of the assessee. Even if such question arises on the aspects of re-appreciation of the evidence such would result into question of fact. Hence, we do not find that any question of law would arise for consideration, as sought to be canvassed.*
>
> *8. Mr.T.K.Vedamurthy, learned AGA attempted to contend that if the selling dealer has not deposited the amount of VAT with the Government, then the purchaser dealer would not be entitled to claim the benefit of entry tax credit and the said aspect is not examined by the Tribunal.*
>
> *9. We do not find that the matter can be stretched to that extent as sought to be canvassed. Once the purchaser dealer-assessee satisfactorily demonstrates that while purchasing goods, he has paid the amount of VAT to the*

selling dealer, the matter should end so far as his entitlement to the claim input tax credit. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the Revenue to proceed against the selling dealer. But thereby the benefit of input tax credit cannot be deprived to the purchaser dealer."

10. The Division Bench of the Delhi High Court in the case of ***On Quest Merchandizing India's*** case supra, held as under:

" 39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

40. The need for the law to distinguish between honest and dishonest dealers was acknowledged by the Punjab and Haryana High Court in Gheru Lal Bal Chand v. State of Haryana (supra) where the constitutional validity of a

similar Section 8 of the Haryana DVAT Act, 2003 („HVAT Act') was being considered. It was held that:

"In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.

In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in. The event where fraud, collusion or connivance is established between

the registered purchasing dealers or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."

41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.

42. All this points to a failure to make a correct classification on a rational basis so that the denial of ITC is not visited upon a bonafide purchasing dealer. This failure to make a reasonable classification, does attract invalidation under Article 14 of the Constitution, as pointed out rightly by learned counsel for the Petitioners. This is also what weighed with the Court in Shanti Kiran India Pvt. Ltd. (supra) where it was observed as under:

"In the present case, Section 9 (1) grants- input-tax credit to purchasing dealers. Section 9 (2), on the other hand

lists out specific situations where the benefit is denied. The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation. placed by the Tribunal-that there is statutory, authority for granting input-tax credit only to the extent tax is deposited by the selling dealer, is unsound and contrary, to the, statute, It is also iniquitous because an onerous burden is placed on the purchasing dealer - in the absence of clear words to that effect in the statute to keep a vigil over the amounts deposited by the selling dealer. The court, does not see any provision or methodology by which the purchasing dealer can monitor the selling dealers behaviour, 'vis-a-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to section 9 (2) is clarificatory. As observed earlier, Section 9 (2) is an exception to the general rule granting input-tax credit to dealers who qualify .for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such as the one spelt out in clause (g) and its addition in 2010, rules out legislative intention of its being a mere clarification of the law which always existed."

43. The Petitioners have argued that Section 9 (2) (g) also suffers from the vice of arbitrariness and is, on that ground, hit by Article 14 of the Constitution. There is some uncertainty as of today on whether a law can be struck down only on the ground of arbitrariness thereby attracting Article 14 of the Constitution. This doubt has been created by the decision of the Supreme Court in Rajbala v. State of Haryana (supra) and Binoy Viswam v. Union of India (2017) 7 SCC 59 the correctness of both of which has been doubted by the Supreme Court in its recent 3:2 decision in Shayara Bano v. Union of India 2017 (9) SCALE 178, invalidating triple talaq where, in the majority opinion of Justice R. F. Nariman, after noting that the decision in State of Andhra

Pradesh v. McDowell & Co. (1996) 3 SCC 709 was on this point per incuriam, observed as under:

"53. However, in State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453 at paragraph 22, in State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 at paragraphs 17 to 19, in Rajbala v. State of Haryana & Ors., (2016) 2 SCC 445 at paragraphs 53 to 65 and 387 Binoy Viswam v. Union of India (2017) 7 SCC 59 at paragraphs 80 to 82, McDowell (supra) was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, Mcdowell (supra) itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell (supra) are, therefore, no longer good law."

44. The above passage occurs in the opinion of Justice R. F. Nariman in which Justice U. U. Lalit joined. A separate opinion was given by Justice Kurien Joseph concurring with the above opinion of Justice Nariman in which it was observed:

"In that view of the matter, I wholly agree with the learned Chief Justice that the 1937 Act is not a legislation regulating talaq. Consequently, I respectfully disagree with the stand taken by Nariman, J. that the 1937 Act is a legislation regulating triple talaq and hence, the same can be tested on the anvil of Article 14. However, on the pure question of law that a legislation, be it plenary or subordinate, can be challenged on the ground of arbitrariness, I agree with the illuminating exposition of law by Nariman, J." (emphasis supplied)

45. It would therefore appear that the decisions in Rajbala v. State of Haryana (supra) and Binoy Viswam v. Union of India (supra) which held that a legislation cannot be challenged on the ground of arbitrariness are no longer good

law. In view of the uncertainty on this issue, the Court does not propose to examine it further in this batch of cases. In any event, the Court has, for the reasons explained, concluded that the failure of Section 9 (2) (g) of the DVAT Act to make a rational classification between purchasing dealers who are bona fide and those that are not renders it vulnerable to invalidation under Article 14 of the Constitution.

46.1 What remains is the discussion of the decisions relied upon by the Department to defend the validity of Section 9 (2) (g) of the DVAT Act as it stands. In M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra (supra) the Bombay High Court was concerned with interpreting Section 48 (5) of the MVAT Act, which reads as under:

> *"(5) For the removal of doubt it is hereby declared that, in no case the amount of set off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government Treasury except to the extent where purchase tax is payable by the Claimant dealer on the purchase of the said goods effected by him:*
>
> *Provided that, where tax levied or leviable under this Act or in earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the government treasury for the purposes of this sub-section."*

46.2 It can straightway be seen that Section 48 (5) of the MVAT Act is not an exact replica of Section 9 (2) (g) of the DVAT Act. For instance, Section 48 (5) of the MVAT Act requires the selling dealer to have "actually paid" the tax collected by him with the Government for the purposes of the

purchasing dealer availing ITC, whereas Section 9 (2) (g) of the DVAT Act requires the selling dealer to either "deposit" the tax collected or lawfully adjust it against his output tax apart from correctly reflecting the sale in his returns. While interpreting those words „actually paid", the Bombay High Court relied on the decisions in State of Madhya Pradesh v. Indore Iron and Steel Mills Private Limited (1999) 111 STC 261 (SC), N.B. Sanjana v. Elphinstone Spinning & Weaving Mills Co. Ltd. (1971) 1 SCC 337 (SC), Sulekh Ram & Sons v. Union of India (1978) 2 ELT J 525 (Del), which were confirmed by the Supreme Court in CCE v. Decent Dyeing Co. (1990) 45 ELT 201 (SC).

46.3 It also requires to be noted that the Bombay High Court was concerned with a situation where the purchase transactions disclosed by the purchasing dealer did not match the sale transactions disclosed by the selling dealer. In contrast, in the cases before this Court there is no instance where Annexures 2A and 2B have not matched.

46.4 Two of the critical paras in the Bombay High Court"s decision in M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra (supra) are paras 48 and 55, which read thus:

> *"48. In the context in which the words "actually paid" are used in the MVAT Act, "actually paid" means what has been as a matter of fact deposited in the treasury. Hence, in the context of the provisions of Section 48(5), we cannot accept the contention of the Petitioner that "actually paid ... in the government treasury" means or should be read to mean what tax ought to have been deposited but has not actually been deposited in the treasury. To accept the submission would be to rewrite the legislative provision. Moreover, the concept of a set off presupposes that tax has been paid in respect of the goods in respect of which a set off is claimed.*

To allow a set off though the tax has not been paid actually would be to defeat the legitimate interests of the Revenue. Hence, in the overall statutory scheme of Section 48; sub-section (5) has a rational basis and foundation. The liability to pay tax is that of the selling dealer. As the Constitution Bench held in Tata Iron & Steel Co. Limited v. State of Bihar (1958) 9 STC 267 (SC); AIR 1958 SC 452 and in George Oakes (Private) Limited v. State of Madras (1962) 13 STC 98 (SWC); AIR 1962 SC 1037, whether the tax is passed on by the selling dealer to the purchasing dealer is a matter of their contractual understanding. Once that is the position that has held the field in our jurisprudence for over fifty years and has been reiterated in Khazan Chand v. State of Jammu and Kashmir (1984) 56 STC 214 (SC); AIR 1984 SC 762 and Central Wines v. Special Commercial Tax Officer (1987) 65 STC 48 (SC); (1987) 2 SCC 371, by the Supreme Court, a dealer cannot obviate his liability to pay tax on his sale transaction, by claiming a set off and placing the responsibility to recover tax on an earlier link in the chain on the Revenue. To test the constitutionality of Section 48(5) one must ask oneself whether the legislature has acted discriminatorily or whether the provision is facially or ex facie discriminatory. Neither is the object or effect of Section 48(5) discriminatory. The State legislature was not bound to grant a set off. If the legislature had not granted a set off, that would not have a bearing on its competence or on constitutionality, since a tax on the sale of goods falls within the purview of Entry 54. In granting a set off, the legislature can impose conditions and that imposed in Section 48(5) is not lacking in rationality. Moreover, the scheme for set off in Section 48 has to be read in its entirety and as one cohesive whole. The legislature cannot be compelled to grant a set off, ignoring the conditions which it imposes. The conditions are not severable and are part of one integrated scheme."

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55. The Punjab and Haryana High Court held that while the genuineness of a certificate and a declaration may be examined by the taxing authority, the onus cannot be placed on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The High Court held that the Department must allow the claim once a proper declaration is furnished. In the event of its falsity, the Department can proceed against the defaulter when the

genuineness of the declaration is not in question. However, an exception has been carved out in the event that fraud, collusion or connivance is established between the registered purchasing dealer or the immediate preceding selling dealer or the earlier dealer in the chain. The judgment of the High Court did not involve a challenge to a provision such as Section 48(5) of the MVAT Act, 2002. We may only note with the greatest respect and deference that while the High Court has relied upon the observations contained in the decisions of the Benches of two Learned Judges of the Supreme Court in Atul Fasteners (2007) 7 VST 278 (SC) and in Corporation Bank (2009) 19 VST 84 (SC), the earlier decisions of the Constitution Benches in TISCO (1958) 9 STC 267 (SC); AIR 1958 SC 452 and in George Oakes (1962) 13 STC 98 (SC); AIR 1962 SC 1037 were not perhaps drawn to the attention of the Court. Moreover, the decision in Elphinston Spinning AIR 1971 SC 2039 which construed the word "paid" in Rule 10 of the Central Excise Rules involved an issue of short levy. Finally we may note that a provision such as Section 48(5) which uses clear and express words such as that in "no case" shall a set off exceed the tax "actually paid" in the government treasury did not fall for consideration."

46.5 The reference, in para 48 above, to the decisions of the Supreme Court in Khazan Chand v. State of Jammu and Kashmir (supra) and Central Wines v. Special Commercial Tax Officer (supra), was in the context of the liability to pay tax being essentially on the selling dealer. It was held there that a selling dealer cannot obviate his liability to pay tax on his „sale transaction" by claiming set off and placing the responsibility to recover tax on an earlier link in the chain on the Revenue. It proceeds on the basis that the State Legislature is not "bound to grant a set off". It further states that the Legislature cannot be "compelled to grant a set-off, ignoring the conditions which it imposes".

46.6 In the present case, the conditions imposed for the grant of ITC are spelt out in Sections 9 (1) and (2) of the DVAT Act and have been adverted to earlier. The claim of the purchasing dealer in the present case is not that it should be granted that ITC de hors the conditions. Their positive case is that each of them, as a purchasing dealer, has complied the conditions as stipulated in Section 9 and therefore, cannot be denied ITC because only selling dealer had failed to fulfil the conditions thereunder. More importantly, the Court finds that there is no provision in the MVAT Act similar to Section 40A of the DVAT Act. Section 40A of the DVAT Act takes care of a situation where the selling dealer and the purchasing dealer act in collusion with a view to defrauding the Revenue. In fact, the operative directions in Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra) indicate that such a measure was suggested by the State Government itself to go after defaulters, i.e. selling dealers failing to actually pay the tax. The Department there undertook to upload on its website the details of the defaulting dealers. It was further undertaken that once there was a final recovery of the tax from the selling dealer, refund would be granted to the purchasing dealer.

46.7 Mr. Satyakam has placed extensively reliance on para 55 of the decision of the Bombay High Court where that High Court disagreed with the conclusions of the Punjab & Haryana High Court in Gheru Lal Bal Chand v. State of Haryana (supra). The Bombay High Court appears to have distinguished the said decision only because there was no provision in the HVAT Act similar to Section 48 (5) of the MVAT Act which required the tax to be „actually paid" into

the Government treasury. In the considered view of the Court, the decision of the Bombay High Court in Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra) turned on the peculiar wording of Section 48 (5) of the MVAT Act. Secondly, the fact situation where the transactions disclosed by the purchasing dealer and the selling dealer did not match does not exist in the present cases. Consequently, the Court does not consider the decision of the Bombay High Court in Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra) to be of assistance to the Department. The fact that the SLP against the said decision was dismissed by the Supreme Court does not alter the position.

47.1 Turning now to the decision of the Madras High Court in Jayam & Co. v. Assistant Commissioner (supra), it is seen that in the said case, the parties agreed that the sale/purchase price as reflected in the invoice would be the gross price. Discounts would later be passed by way of credit notes. The Madras High Court held that, insofar as the Tamil Nadu Value Added Tax („TNVAT") was concerned, the dealer had to produce a tax invoice evidencing the amount of input tax. It was further held that discount passed on through credit notes could not be considered for determination of „price" and that the "tax invoice alone" ought to be considered for determining the tax liability.

47.2 The provision under challenge in Jayam & Co. v. Assistant Commissioner (supra) was Section 19 (20) of the TNVAT Act which reads as under:

"(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a

price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."

47.3 Here again, it can be seen that Section 9 (2) (g) of the DVAT Act is differently worded. Three conditions that were mandated by the above provision as noted by the Supreme Court were as under:

"(a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this Section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect evidencing the amount of input tax."

47.4 The Court in Jayam & Co. went strictly by the wording of the above provision to determine what would form the subject matter of the tax liability and concluded that it was only the price indicated in the tax invoice and not price as reduced by the credit note. The Court fails to appreciate how the aforementioned decision can be of any assistance to the Department in the present case since the provision which the Court is concerned with herein is in a different context and, therefore, differently worded as well.

48. The decision of the Supreme Court in Corporation Bank (supra) applies to the present case on all fronts. The Court explained there that the selling dealer collects tax as an agent of the Government. Therefore, the bona fide buyer cannot be put in jeopardy when he has done all the law requires him to do so. The purchasing dealer has no means to ascertain and secure compliance by the selling dealer.

Again, in Central Wines, Hyderabad (supra) the Supreme Court inter alia observed that "the Seller acts as an agent of the buyer while collecting the tax".

Reading down

49. The question that next arises is whether Section 9 (2) (g) of the DVAT Act, for reasons already explained, requires to be struck down as violative of Article 14 or can be saved from invalidity by any known interpretational device?

50. The offending part of Section 9 (2) (g) of the DVAT Act is the expression „the dealers or class of dealers" occurring therein which, as it presently stands, makes no distinction between selling and purchasing dealers and further between bona fide purchasing dealers and those not bonafide.

51. In Delhi Transport Corporation v. DTC Mazdoor Congress AIR 1991 SC 101, a Constitution Bench of the Supreme Court explained in what cases the doctrine of „reading down" of statutes to save their constitutionality could be deployed:

"The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it constitutional the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is

cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. If the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. The doctrine can never be called into play where the statute requires extensive additions and deletions."

52. It was further explained in the same decision as under:

"The Courts, though, have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the constitution, resort cannot be had to the doctrine of reading down to blow life into the void law to save it from unconstitutionality or to confer jurisdiction on the legislature."

Conclusions

53. In light of the above legal position, the Court hereby holds that the expression „dealer or class of dealers" occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression „dealer or class of dealers" in Section 9 (2) (g) is „read down" in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

55. Resultantly, the default assessment orders of tax, interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2) (g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside."

11. In a batch of petitions including ***Arise India's case supra***, the Apex Court affirmed the decision of the Delhi High Court in ***On Quest Merchandizing India's case supra*** and held as under:

" On hearing Learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

2. Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the case where the purchase transactions are not bona fide like the present case and those case ought to have been remitted back to the competent authority.

3. Learned Additional Solicitor General Submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.

4. Pending applications(s), if any, stand disposed. Of."

12. In ***Onyx Design's*** case supra, this Court followed the aforesaid judgments and held as under:

*" **12.** From the aforesaid rulings, it is clear that the benefit of input tax cannot be deprived to the purchaser dealer, if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer.*

***13.** It is beneficial to refer to the judgment of the honourable High Court of Delhi in the case of Arise India Limited*, wherein the validity of section 9(2)(g) of the Delhi*

Value Added tax Act, 2004 ("the DVAT Act", for short) fell for consideration. Section 9(2)(g) of the DVAT Act reads as under (page 189 in 56 GSTR) :

"(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."

***14.** The findings are recorded by the honourable court at paragraphs 39, 40 and 41 as under (pages 198 and 199 in 56 GSTR) :*

"39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution.

40. The need for the law to distinguish between honest and dishonest dealers was acknowledged by the Punjab and Haryana High Court in Gheru Lal Bal Chand v. State of Haryana [2011] 45 VST 195 (P&H) where the constitutional validity of a similar section 8 of the Haryana VAT Act, 2003 ("HVAT Act") was being considered. It was held that (pages 208 and 209 in 45 VST) :

'In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to

the collusion or connivance with the offender. However, law nowhere envisages to impose any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any mala fide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier there- to, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touch tone of articles 14 and 19 of the Constitution of India. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.

In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The Department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the Department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in the event where fraud, collusion or connivance is established between the registered purchasing dealers or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VATC-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result

in achieving the purpose of the rule which is to make the object of the provisions of the Act, workable, i.e., realization of tax by the revenue by legitimate methods.'

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer."

15. *The honourable Delhi High Court read down the said section 9(2)(g) to the effect that the expression "dealer or class of dealers" should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with the Act where there is no mismatch of the transactions. It was observed that unless the expression "dealer or class of dealers" in section 9(2)(g) "read down" in the above manner, the entire provision has to be held to be violative of article 14 of the Constitution. It is also significant to note that the said judgment has been confirmed by the honourable apex court.*

16. *The reasonings of the prescribed authority for disallowing the input-tax credit recorded in the assessment order are quoted hereunder :*

"The reply filed by the assessee was studied in detail. It is true that the dealer has effected purchases from the dealers who have been registered under the provisions of the KVAT Act, 2003. While some of them have been subsequently de-registered, others were still filing returns during the assessment year. However, in all the cases where input credit is proposed to be disallowed, it is very much true that those dealers have not remitted the taxes collected from the assessee. This would lead to substantial loss of revenue to the State. Since the amount collected by the assessee is not remitted to the Government, input credit on these purchases cannot be given to the assessee.

Further, it is advised in the reply that the Department should initiate recovery actions from the defaulting dealers in terms of Part V, rules 55 to 130B of the KVAT Rules, 2003. However, the undersigned officer is very limited in resources and powers to initiate action against all such defaulters. An assessing officer has power to verify books of accounts and issue notices to only those dealers for whom assignment note is issued by the honourable Commissioner of Commercial Taxes, Karnataka. What is more, the defaulting dealers in the instant case (assessee's sellers) are very few ; however, they may run into thousands in some other case. Given the limited resource and manpower, it is nearly impossible for the Department to initiate action against all defaulting dealers, where multiple reassessments have to be done and it becomes difficult to keep track of all the defaulters.

Hence,. .. .

In view of the above discussions, it is clear that the assessee has the knowledge that the taxes paid by him on purchases made from defaulting dealers has not been remitted to the Government. Though there is no provision in the KVAT Act, 2003 which restricts input credit on purchases effected from defaulting dealers, if the input is not restricted, it would lead to loss of revenue to the State. State is not a profit-making body but a system which is involved in providing amenities and protection to the citizen. For these activities, it needs money, and taxes collected by people forms major source of its income. Hence, when an amount

collected by way of tax which is due to the State is not remitted, it leads to loss of revenue to the State's exchequer. If input credit is allowed even on the purchases where the tax due to the Government was not paid, it leads to a bad trend and to substantial loss of revenue to the State." (emphasis supplied)

17. *The reasons assigned by the assessing officer establishes that the petitioner-assessee has fully discharged the burden of proof to claim the deduction of input tax as per the tax invoices but the selling dealer has failed to remit the said collected taxes. The purchaser dealer having paid the amount of VAT to the registered selling dealer, his entitlement to claim input-tax credit need not be tagged with the registered selling dealer depositing the said collected tax amount in full or a part thereof. The charging provision of section 3 provides that the tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered in accordance with the provisions of the Act. Further, the tax shall also to be levied, and paid by every registered dealer or dealer liable to be registered on the sale of taxable goods to him for use in the course of his business, by a person who is not registered under this Act. Indisputably, the petitioner has purchased the goods from a registered dealer not from an unregistered dealer. Section 9 of the KVAT Act provides collection of tax by registered dealers. If there is any default on the part of such registered dealers in not remitting the tax, so collected into the Government treasury or any designated bank and furnish monthly returns as specified under section 35 to the prescribed authority, the proceedings are required to be*

initiated against such registered selling dealers in accordance with the provisions of the KVAT Act.

18. *The Division Bench of this court in the case of Bhavani Enterprises (2019) 67 GST 201 (Karn), was dealing with the penalty imposed by the prescribed authority under section 70(2) of the KVAT Act wherein, the input-tax credit availed by the assessee was held to be on the basis of fake and false invoices of the selling dealers who actually did not exist and upon investigation and query, being found that those dealers did not exist and therefore the input-tax credit could not be allowed in the hands of the purchasing dealer. In that context, it is held that the burden of proving that input tax claim is correct lies upon the dealer claiming such input-tax credit.*

19. *In the case of Microqual Techno Private Limited (2012) 52 VST 362 (Karn), the revisional authority exercising the suo motu power of revision against the order of the first appellate authority which set aside the penalty imposed had recorded a finding that the invoices produced were not genuine as the same were procured through a mediator which was well within the knowledge of the assessee. In such circumstances, it was observed that in order to claim the benefit of refund of input tax, the assessee has produced fake invoices which did not reflect the genuine transaction. It is not a bona fide act of the assessee. Accordingly, the penalty levied under section 70 of the Act was confirmed.*

20. *In view of admission of the genuine transaction as well as bona fide claim and in the absence of any other allegations made against the purchasing dealer in the assessment orders, merely for the reason that selling dealers have not deposited the collected tax amount or some of the selling dealers have been subsequently de registered cannot be a ground to deny the input-tax credit.*

21. *It is the contention of the petitioner that respondent No. 1—prescribed authority has misstated the dates of de-registration of certain selling dealers. These factual aspects requires to be re-considered by the respondent No.1—prescribed authority. It is needless to observe that in the event of purchases made by the assessee relates to the period subsequent to de- registration of the selling dealer, no input-tax credit can be allowed.*

22. *For the reasons aforesaid, the reassessment orders and the demand notices at Annexures A, B, C and D are set aside. The proceedings are restored to the file of respondent No. 1—prescribed authority for reconsideration. Respondent No. 1—prescribed authority shall reconsider the matter in accordance with law keeping in mind the observations made hereinabove and after providing an opportunity of hearing to the petitioner shall conclude the reassessments in an expedite manner.*

23. *Writ petitions stand disposed of in terms of the above."*

13. Subsequently, in ***Jain Steel's*** case supra, this Court relied upon ***Onyx Design's*** case supra and held as under:

> *" **7.** Having heard the learned counsel appearing for the parties and perusing the material on record, it is ex fade apparent that the assessing authority has denied the input tax credit mainly on the ground that the selling dealer has not deposited the taxes collected. It is recorded that the selling dealer-M/s. Sai Baba Industries, Tumkur TIN : 29290220285, has not filed monthly returns in VAT-100s from December 2014 onwards; it clearly goes to prove that the petitioner has not paid output taxes payable to the Government.*
>
> *There is no dispute regarding the genuineness of the purchase made by the petitioner-purchasing dealer. The assessing authority sans examining the transaction of the petitioner inasmuch as the payment of taxes made to the selling dealer, merely for the reason that the selling dealer has not deposited the collected tax amount, ought not to have arrived at a decision to deny the input tax credit. This court in the case of Onyx Designs (2019) 67 GSTR 209 (Karn)), has observed as under (page 220 in 67 GSTR):*
>
> *"20. In view of admission of the genuine transaction as well as bona fide claim and in the absence of any other allegations made against the purchasing dealer in the assessment orders, merely for the reason that selling dealers have not deposited the collected tax amount or some of the selling dealers have been subsequently deregistered cannot be a ground to deny the input tax credit."*
>
> *In the case of Bhavani Enterprises (2019) 67 GSTR 201 (Karn)), the Divi-sion Bench has observed thus (page 208 in 67 GSTR):*

"11. Thus, burden of proving that the claim of input tax credit is correct, is squarely upon the assessee who never discharged the said burden in the present case. The first appellate authority was absolutely wrong in setting aside the penalty assuming such burden of proof to be on the Revenue. The revisional authority, was therefore, perfectly justified and within his jurisdiction to restore the order of penalty in these circumstances. We also find that at least two of the dealers from whom input tax credit invoices were claimed in the present case were for consideration before this court in Microqual Techno Private Limited v. Additional Commissioner of Commercial Taxes (2012) 52 VST 362 (Karn)) case also, namely, M/s. S.L.V. Enterprises and M/s. T.D. and company. Therefore, the same or similar bogus selling dealers registered without actual dealers existing appears to be forming the chain of producing false and fake invoices, on the basis of which, such input tax credit was claimed by the purchasing dealers."

In the case of Bhavani Enterprises (2019) 67 GSTR 201 (Karn)), it was imperative that some of the dealers from whom input tax credit invoices were claimed in the case were before this court in Microqual's case 2012 VST 362 (Karn)), namely, M/s. S.L.V. Enterprises and M/s. T.D. and Company, where the similar bogus selling dealers registered without actual dealership producing false and fake invoices claiming input tax credit. In that context it has been held that the assessee did not knowingly produced such invoices, knowing them to be false or fake. A dealer entering into a genuine transaction of purchase always knows the existence and identity of selling dealer. Considering these aspects, the Division Bench has held that these questions remains finding of fact, not giving raise to any question of law and has restored the penalty.

11. *There is no cavil on the said legal proposition. Now, the fulcrum of dispute is whether the assessee has discharged the burden of proving the claim of input tax credit on the payment of taxes alleged to have been made. Without examining the same, merely on the ground that no selling dealer has deposited the collected taxes, input tax credit has been denied. This factual aspect requires to be reconsidered by the assessing authority in the light of the judgments referred to above.*

12. *Even as regards denial of input tax credit relating to the purchase of old used machinery from M/s. Saibaba Industries claimed as capital goods by the assessee is not supported by any satisfactory reasons.*

13. *For the aforesaid reasons, the assessment order impugned deserves to be set aside. Accordingly, the impugned order and the demand notice both dated March 30, 2019 at annexures F and G are set aside and the matter is remanded to the assessing officer to reconsider the matter in the light of the observations made hereinabove. All the rights and contentions of the parties are left open. Compliance shall be made by the respondent in an expedite manner.*

14. *The writ petition stands disposed of in terms of the above."*

14. The Apex Court in ***Shanthi Kiran's case supra***, relied upon the judgment of the Delhi High Court in ***On Quest*** and

noticed that the same had been confirmed by the Apex Court in ***SLP (Civil) 36750/2017*** and held as under:

> *" 1. Heard learned counsel for the appellant and perused the record.*
>
> *2. In these appeals the short issue that arose for consideration before the Delhi High Court1 was whether the benefit of Input Tax Credit (ITC) is available to the registered purchaser dealers (respondents herein) who paid taxes to registered seller dealer(s) in 1 1 High Court Date: 2025.10.10 13:52:23 IST Reason: terms of invoice(s) raised by them even though those seller dealers did not deposit the collected tax with the Government.*
>
> *3. There is no dispute that on the date of transaction, the seller dealer(s) were registered with the Department. However, after the transaction, the registration of those seller dealer(s) was cancelled, and they defaulted in depositing the tax collected by them from the purchaser dealer(s). The High Court vide impugned judgment and order(s) found respondent(s) bona fide purchaser dealer(s) who had paid taxes in good faith to registered seller dealer(s) and, therefore, entitled to the benefit of ITC and, accordingly, allowed the said benefit to them after due verification of invoices.*
>
> *4. A similar issue later arose for consideration before the High Court in On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi and Ors., 2017 SCC OnLine Delhi 13037 in the context of the provisions of Section 9(2) (g) of Delhi Value Added Tax Act, 2004.*

5. Section 9(1) of DVAT Act permits ITC to a registered dealer in respect of turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under Section 7 of the DVAT Act. Sub- section (2) of Section 9 sets out the conditions under which such ITC would not be allowed. Clause (g) of sub-section (2) of Section 9 made ITC benefit available to a purchasing dealer only when the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period. Reading down clause 2 2 DVAT Act (g) of sub-section (2) of Section 9, in On Quest Merchandising India (supra), the Delhi High Court held:

"62. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

63. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling

dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act."

6. The aforesaid decision of the High Court was challenged before this Court in Special Leave to Appeal (Civil) No.36750 of 2017. The said special leave petition was disposed of without interfering with the order of the High Court.

7. In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed.

8. Pending application(s), if any, shall stand disposed of."

15. While dealing with the Constitutional validity of the impugned provisions, the Guwathi High Court in ***National Plasto Moulding's case supra***, held as under:

Learned senior counsel for the petitioners has submitted that though in this batch writ petitions, the petitioners have challenged the validity of section 16(2)(c) and 16(2)(d) of the Assam Goods and Services tax Act, 2017

as well as the validity of section 16(2)(c) and 16(2)(d) of the Central Goods and Services tax Act, 2017 along with the show-cause notices issued to the petitioners, however, the controversy involved in these writ petitions is squarely covered by the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi, reported in [(2018) 56 GSTR 177 (Delhi); 2017 SCC OnLine Del 11286.] , wherein it was categorically held that a purchasing dealer cannot be punished for the act of the selling dealer in case the selling dealer had failed to deposit the tax collected by it.

2. *It is submitted that the Delhi High Court has observed that the provisions of section 9(2)(g) of the Delhi Value Added tax Act, 2004 can be read down and the demand raised against the purchasing dealers, who have entered into bona fide transaction, cannot be sustained. It is also submitted that the special leave appeal against the said judgment of the Delhi High Court has already been dismissed by the honourable Supreme Court on January 10, 2018 vide petition for Special Leave to Appeal No. 36750 of 2017 [Commissioner of Trade and Taxes v. Arise India Limited, (2024) 129 GSTR 542 (SC); 2018 SCC OnLine SC 3859.] .*

3. *Mr. S.C. Keyal, learned Standing Counsel, CGST and Mr. B. Gogoi, learned counsel for the respondent State are not in position to dispute the fact that the controversy raised in these writ petitions is squarely covered by the decision of the Delhi High Court rendered in On Quest Merchandising India Pvt. Ltd. [On Quest Merchandising India*

Pvt. Ltd. v. Government of NCT of Delhi, (2018) 56 GSTR 177 (Delhi); 2017 SCC OnLine Del 11286.] .

4. *Before the Delhi High Court, the validity of section 9(2)(g) of the Delhi Value Added tax Act, 2004 was under challenge. The said provisions of the Delhi Value Added tax Act are analogous to the provisions of section 16(2)(c) and 16(2)(d) of the Assam Goods and Services tax Act, 2017 as well as section 16(2)(c) and 16(2)(d) of the Central Goods and Services tax Act, 2017.*

5. *The Delhi High Court in the said judgment has observed as under (pages 198, 199, 207 and 208 in 56 GSTR:*

"39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution….

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the

selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer….

53. In light of the above legal position, the court hereby holds that the expression 'dealer or class of dealers' occurring in section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with section 50 of the Act where there is no mismatch of the transactions in annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in section 9(2)(g) is 'read down' in the above manner, the entire provision would have to be held to be violative of article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under section 40A of the DVAT Act."

6. *The honourable Supreme Court [Commissioner of Trade and Taxes v. Arise India Limited, (2024) 129 GSTR 542 (SC); 2018 SCC OnLine SC 3859.] has dismissed the SLP preferred against the said judgment by passing the following order (page 544 in 129 GSTR):*

"On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order [On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi, (2018) 56 GSTR 177 (Delhi); 2017 SCC OnLine Del 11286.] . The special leave petition is dismissed.

The learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the cases where the purchase transactions are not bona fide like the present case and those cases ought to have been remitted back to the competent authority.

The learned Additional Solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.

Pending application(s), if any, stand disposed of."

***7.** Having gone through the above referred judgments, we are of the view that the controversy raised in this batch of writ petitions is squarely covered by the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. [On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi, (2018) 56 GSTR 177 (Delhi); 2017 SCC OnLine Del 11286.] . Hence, the show-cause notices impugned in the present writ petitions and the consequential orders are set aside. However, the Department is free to act in those cases, where the purchase transactions are not bona fide, in accordance with law.*

***8.** With these observations, these writ petitions are disposed of."*

16. All the aforesaid judgments were followed by the Division Bench of Tripura High Court in ***Sahil Enterprises*** *case supra,* in which the High Court while coming to the conclusion that the impugned provisions were not violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India, held that Section 16(2)(c) ought not to be interpreted to deny ITC to purchasers in a bonafide transaction like the petitioner and it should be read down and applied only where the transaction is found not be bonafide or is a collusive fraudulent transaction to defraud the Revenue as hereunder:

> *" 1) The Challenge in this writ petition is primarily to the constitutional validity of Section 16(2) (c) of the Central Goods and Services Tax Act, 2017(for shot ' the Act') In additional In addition, petitioner has also sought for quashing of an order dt.17.5.2022 issued by the Assistant Commissioner, Central Goods and Services Tax, Tripura Division-I, Agartala (Respondent no.3) confirming a demand of Rs.1,11,60,830/- along with interest and penalty under section 73 of the said Act.*
>
> ***The factual background to the filing of the Writ Petition:***
>
> *2) The petitioner, a proprietary concern engaged in trading of rubber products, had purchased different products from M/s Sentu Dey (for short "supplier/ Respondent no.4") on due payment of Goods and Services Tax (for short*

'GST') and further sold them as such. These transactions took place between July,2017 to January,2019 involving GST of Rs.1,11,60,830/- which it had paid to its vendor/supplier.

3) On an investigation by officers of the Enforcement Branch of the CGST Commissionerate, Agartala of the supplier Company, it was discovered that the respondent no.4 was supplying rubber products to different traders, but was not depositing the GST paid by the purchasers to it including the petitioner with the Government. Respondent no.4 had filed Form GSTR-01 return under section 37 of the Act showing the sale of goods to the petitioner, but failed to deposit the tax collected from petitioner while filing GSTR-3B under section 39 of the Act. It had filed 'Nil' GSTR-3B returns.

4) The respondent No.3 opined that as Respondent no.4 did not deposit the GST with the Government, petitioner is not eligible to avail Input Tax Credit (for short 'ITC') of the same amount to discharge it's output tax liability even though petitioner had already paid the GST amount to Respondent no.4. The respondent nos.1 to 3 blocked the whole ITC balance as on 8.2.2021 amounting to Rs.7,32,353/- from the Electronic Credit Ledger of the petitioner.

5) When petitioner sent an email dt.15.5.2020 enquiring about the blocking of the ITC in its Electronic Credit ledger, the respondent No.3, by letter dt.21.5.2020 informed petitioner that Respondent no.4 had not discharged its tax liabilities to the Government, and as petitioner had made

purchases from Respondent no.4, it is not entitled to ITC of the tax paid by it to Respondent no.4.

6) Later on 7.1.2021, the respondent issued a Demand-cum-Show cause notice to petitioner invoking Section 73 of the Act asking petitioner to show cause why Rs.1,11,60,830/- wrongly availed by petitioner as ITC should not be reversed along with interest and penalty.

7) Petitioner submitted reply on 8.2.2021 stating that it could only verify the details of outward supplies reflected in GSTR-2A and there was no mechanism to verify the GSTR-3B filed by its supplier, Respondent no.4. It contended that since it had paid the GST to Respondent no.4 and had availed the ITC as per law, the demand raised in the respondent No.3's notice should be dropped.

8) But on 17.5.2022, the respondent No.3 passed orders confirming the demand raised in the show cause notice. This order is impugned in the Writ Petition.

9) Petitioner had also filed a W.P.(C) 531 of 2021 in this Court challenging the show cause notice issued by respondent, but after the order dt.17.5.2022 was passed, it withdrew the said writ petition and then filed the instant writ petition challenging the constitutional validity of Section 16(2)(c) of the Act as violative of Art.14,19(1)(g) and 300-A of the Constitution of India and also challenging the order dt.17.5.2022 passed by the respondent no.3.

10) The respondents 2 and 3 filed counter affidavit refuting the pleas of the petitioner and contended that there is no basis to say that Section 16(2)(c) of the Act is violative of above provisions of the Constitution and contended that it

is valid in all respects. They also contended that Courts must be slow in inferring unconstitutionality of taxing statues as legislature has lot of freedom in enacting such laws. According to them the impugned order dt.17.5.2022 does not suffer from any defect or error and should be sustained.

Consideration by the Court:

11) Section 16 deals with eligibility and conditions for taking ITC. The said section to the extent relevant for our consideration states:

> *"Section 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 4[section 41 5[***]], 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 instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:
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 9[paid by him along with interest payable under section 50], 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 10[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.
(3) .....
(4) ... ...
[Provided ... ...
[(5) ... .
(6)... ... " (emphasis supplied)

12) Section 16 (2) (c) of the Act thus denies to an assessee availment of ITC in relation to supply of goods or

services or both if tax charged in respect of such supply has not been actually paid to the Government or through utilization of input tax credit admissible in respect of the said supply.

13) Rule 36 of the Central Goods and Services Tax Rules, 2017 is also relevant and it states:

> *"Rule 36: Documentary Requirements and Conditions for claiming Input Tax Credit:*
> *(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -*
> *(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;*
> *(b) an invoice issued in accordance with the provisions of clause*
> *(f) of sub-section (3) of section 31, subject to the payment of tax;*
> *(c) a debit note issued by a supplier in accordance with the provisions of section 34;*
> *(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there-under for the assessment of integrated tax on imports;*
> *(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.*
> *(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input*

tax credit may be availed by such registered person.
(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under section 74 .
(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-
(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility; and
(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60."

14) Thus GST is paid by the purchaser to a supplier on purchase of goods or services. The purchaser/dealer then avails the tax paid to the supplier as ITC in its Electronic Credit Ledger and offsets its partial liability by using the said ITC and the tax collected on the profit margin is paid in cash. The concept of ITC is to avoid burden of double taxation on the tax payer.

15) Section 16 deals with the eligibility conditions to avail ITC. Section 16(2) (c) allows availment of ITC to the purchaser only when the supplier had discharged the output liability through cash or by using ITC. But if the supplier has not paid the tax to the Government, the purchaser is not eligible to avail ITC.

16) The fact that there is no mechanism with the recipient of goods to verify whether the supplier has discharged its liability to the Government, or not, is not disputed by respondents. In view of this, it is impossible for the purchaser to check whether the supplier has deposited the tax paid by him to the Government and then avail ITC. Also the supplier is not normally under the control of the purchaser. It is not disputed that it is not possible for a purchaser to keep a check on activities of its supplier or ensure that the latter makes over to the Government, the GST paid to him by the purchaser.

17) Petitioner contends that to deny a purchaser like petitioner, who is a bona fide purchaser, and who has paid the GST to the supplier, the ITC benefit is arbitrary and unreasonable and violates Art.14, 19(1) (g) and Art.300-A of the Constitution of India. They contend that for a mistake on the part of the supplier to make over the tax collected from purchaser to the Government, the purchaser cannot be found fault with. Otherwise, it would be penalizing a person for a mistake of another person. By denying the purchaser availment of ITC and making the purchaser pay the tax to the Government again amounts to double collection when he has already paid to the supplier and it violates Art.265 of the constitution of India.

18) We find considerable force in the contention of the petitioner.

19) In our opinion, there is a failure by the Parliament, while enacting Section 16 (2)(c) of the Act, to make a distinction between purchasing dealers who have bona fide

transacted with the selling dealer by taking all precautions as required by the Act and those that have not. Therefore, there is need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers.

20) The purchasing dealer cannot be asked to do the impossible, i.e., to identify a selling dealer who will not deposit with the Government, the tax collected by him from purchasing dealers, and avoid transacting with such selling dealers.

21) Alternatively, what section 16(2)(c) of the Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer; and if the selling dealer fails to do so, undergo the risk of being denied the ITC. It would be extremely difficult for a purchasing dealer to ensure that the selling dealer deposits the GST collected from him with the Government.

22) So section 16(2) (c) of the Act places an onerous burden on a bona fide purchasing dealer.

23) In these circumstances, if the law seeks to visit disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

24) Reading down a provision is undoubtedly an accepted method to save it from the vice of unconstitutionality. It would be appropriate in the instant case too to adopt the said principle.

25) In B.R. Enterprises v. State of U.P.1, the situation where such a principle of reading down can be applied is explained in the following terms:

> *"81. ..... Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated."*

26) In CST v. Radhakrishan2, sanction for prosecution of a dealer under the M.P. General Sales tax Act was given by the Commissioner of Taxes under section 46 (1) (c) of the said Act, though there was a procedure for recovery of tax by imposing penalty under section 22(4-A) of the said Act. The validity of the sanction was questioned on the ground that under the Sales Tax Act, the Commissioner is entitled to pursue two different procedures for enforcing and realizing the assessment made, but as there is no guidance as to the circumstances in which he should resort to either of the two procedures, the provision regarding grant of sanction is invalid. Rejecting the said (1999) 9 SCC 700 : (2000) 120 STC 302, at page 764 :

(1979) 2 SCC 249 : (1979) 118 ITR 534, at page 257 contention and reading down the provision enabling prosecution for failure to pay tax by a dealer, the Supreme Court held:

> *"15 . ... In considering the validity of a statute the presumption is in favour of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. It is well settled that courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to rule of reading down the sections if it becomes necessary to uphold the validity of the sections. In the present case it is seen, under Section 46 before a prosecution can be launched, it is necessary that the assessee should have failed to pay the tax due within the time allowed without reasonable cause. The duty of the Commissioner is, therefore, to be satisfied that the assessee has failed without reasonable cause and without recourse to prosecution under Section 46(1)(c), the tax due cannot be collected. The provisions of Section 22(4-A) can be read as being applicable to cases in which the stringent step of prosecution is considered not necessary. The option is with the Commissioner and if he thinks levy of penalty would achieve the purpose of collection of the tax he can have recourse to the provisions of Section 22(4-A). Before levying a penalty under Section 22(4-A), the Commissioner shall give reasonable opportunity of being heard as to why the penalty should not be levied. Reading the two provisions harmoniously, we are of the view that the*

discretion is given to the Commissioner to resort to one of the two remedies as the facts of the case may require. In graver cases he will be justified in taking the drastic remedy and resorting to prosecution in the criminal court if he is satisfied that such a course is necessary for the collection of the tax expeditiously. If the discretion is not properly exercised the court may be justified in interfering in such cases but the law cannot be held to be invalid." (emphasized supplied)

27) A provision similar to Section 16(2)(c) of the Act also existed in Section 9(2) (g) the Delhi Value Added Tax Act, 2004.

28) This provision was considered by the Delhi High Court in Quest Merchandising India Pvt.Ltd and others v. Government of NCT of Delhi and others3.

Section 9(1) of DVAT Act permits ITC to a registered dealer in respect of turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under Section 7 of the DVAT Act. Sub section (2) of Section 9 sets out the conditions under which such ITC would not be allowed. Clause (g) of sub-section (2) of Section 9 made ITC benefit available to a purchasing dealer only when the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.

Reading down clause (g) of sub-section (2) of Section 9, in On Quest Merchandising India (3 supra), the Delhi High Court held: (2017) SCC ONLINE DELHI 13037 "39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have

bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution.

40. ... ...

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer. ....

53.. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

> *54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act." (emphasis supplied)*

29) The aforesaid decision of the High Court was challenged before the Supreme Court in Commissioner of Trade and Tax Delhi v. M/s Arise India Ltd.4. The said Special Leave petition was dismissed without interfering with the order of the High Court. The Supreme Court held:

"On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order.
The Special Leave Petition is dismissed.
Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the cases where the purchase transactions are Special Leave to Appeal (Civil) No.36750 of 2017 dt. 10.1.2018 not bona fide like the present case and those cases ought to have been remitted back to the competent authority.
Learned Additional Solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for."

30) The same issue again arose in the Delhi High Court in M/s Shanti Kiran India (P) Ltd v. The Commissioner Trade

and Tax, Delhi.5 i.e whether the benefit of ITC is available to the registered purchaser dealers who paid taxes to the registered seller dealer(s) in terms of invoice(s) raised by them even though those seller dealers did not deposit the collected tax with the Government. The Delhi High Court held in favour of the purchaser dealers and against State.

31) This judgment was again challenged in the Supreme Court in The Commissioner Trade and Tax, Delhi v. M/s Shanti Kiran India (P) Ltd6. The Supreme Court followed the decision of the Delhi High Court in Quest Merchandising India Pvt.Ltd (3 supra) as affirmed by the Supreme Court in M/s Arise India (4 supra) and held:

> *"In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed."*

32) The contention of the Dy. Solicitor General of India that the judgments of the Supreme Court in M/s Arise India (4 Supra) and in Commissioner Trade and Tax, Delhi (6 supra) are not binding precedents, cannot be countenanced.

33) This is because in the former case, the Solicitor General, who is the law officer of the Union of India, himself wanted to pursue cases pending in the Delhi High Court where the transactions were not bona fide, thus implying that the Government had accepted the basis of the judgment. In the latter case, the Supreme Court applied to the facts of the said case the principle that if the transactions are not doubted, ITC cannot be denied. When the principle is

actually applied by the Supreme Court to the facts of the case, it has to be taken that the view in Quest Merchandising India Pvt.Ltd (3 supra) has been approved by the Supreme Court and it cannot be contended that it's judgment is not a precedent.

34) We are of the view that the same reasoning as adopted by the Delhi High Court in Quest Merchandising India Pvt.Ltd (3 supra) and M/s Shanti Kiran India (P) Ltd (5 supra) as approved by the Supreme Court, should be adopted to the interpretation of Section 16(2) (c) of the Act.

35) It ought not to be interpreted to deny ITC to purchasers in a bona fide transaction and should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue.

36) The Gauhati High Court in National Plasto Moulding v.State of Assam7, where the constitutionality of Section 16(2) (c) of the Act was (2024) 8 TMI 836= 2024(89) GSTL 82 (Gau) challenged, observed that the controversy was squarely covered by the decision of the Delhi High Court in On Quest Merchandising India Private Limited (3 supra) as approved by the Supreme Court in Arise India (4 supra), and also read down the said provision and declined to apply it to a purchasing dealer, who had bona fide entered into purchase transactions with validly registered selling dealers. It set aside the show cause notices and the consequential orders challenged in the batch of the Writ Petitions. It held that the Department is free to act in the said cases where purchase transactions are not bona fide.

37) It reiterated the same in M/s McLeod Russel India Ltd. V. Union of India and 3 others8.

38) It is stated across the bar that the SLP filed against the judgment in National Plasto Moulding (7 supra) was dismissed by a non-speaking order and that no SLP had been filed by the Union of India against the judgment in M/s McLeod Russel India Ltd (8 supra).

39) No doubt some High Courts have upheld the constitutionality of Section 16(2) (c) of the Act without reading it down. They are:

(a) Kerala High Court in M.Trade Links v. Union of India, Nahasshukoor and another v. Assistant Commissioner9

(b) Patna High Court in Aastha Enterprises v. State of Bihar10

(c) Madhya Pradesh High Court in M/s Shree Krishna Chemicals v.Union of India11 (2025) 3 TMI 59 (Gau) 2023 SCC online Ker 11369 2023 SCC Online Pat 4395 2025 (2) TMI 1006 (M.P)

(d) Madras High Court in M/s Baby Marine (Eastern) Exports v. Union of India and others12

(e) Andhra Pradesh High Court in Thirumalakonda Plywoods v. assistant Commissioner13

40) In the opinion of these High Courts, the legislature must enjoy a wide and flexible power to enable it to adjust its system of taxation in proper and reasonable ways, though it is permissible to declare a taxation statute as unconstitutional if it infringes the fundamental rights guaranteed under part III of the Constitution; that input tax credit is in the nature of a benefit or concession extended to

the dealer under the statutory scheme ; even if it held to be an entitlement, this entitlement is subject to the restrictions as provided under the scheme or the statute; and that claim to input tax is not an absolute right, but it can be said that it is an entitlement subject to the conditions and restrictions as envisaged in Section 16(2) to 16(4), Section 43 , and the Rules made thereunder. They hold that as per the scheme of the Act only tax paid and collected and paid to the Government could be given as ITC; and when the Government has not received the tax, a dealer cannot be given ITC.

According to some of them, taxation legislation may not be easily interfered with and Court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional; that challenge to it on ground of violation of Art.14 is vague; and that the remedy of the purchasing seller is to sue the seller for recovery of the tax he had paid which the latter had not paid to the Government.

2025 (8) TMI 791(Madras) 2023 SCC Online AP 1476

41) But none of the above High Courts have looked at the practical impossibility for a purchaser to ensure that the seller pays the GST to the Government particularly when he has no means of checking the said fact.

42) While there can be no dispute about the principles mentioned in their judgments, their failure to appreciate the above important aspect, does not persuade us to follow their view.

43) Yet another important aspect is that in none of the above decisions rendered by the other High Courts referred to in para 39 (supra) , the decisions of the Delhi High Court in Quest Merchandising India Pvt.Ltd and others(3 supra) approved by the Supreme Court in M/s Arise India (4 supra) and in M/s Shanti Kiran (5 supra) also approved by the Supreme Court in Commissioner of Trade and Tax (6 supra) were noticed or considered. Had those High Courts been made aware of these decisions, may be they would have taken the same view as the Delhi High Court and the Supreme Court did.

44) Moreover, it is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice (Laxmipat Singhania v. CIT14). There cannot be dispute that the concept of Input Tax credit is introduced to ensure that there is no burden of double taxation on a tax payer. In Mahaveer Kumar Jain v. CIT15, the Supreme Court held:

> *"21. Further, in a decision of this Court in Jain Bros. v. Union of India16, it has been held as under: (SCC pp. 315-16, para 6) "6. It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted, they AIR 1969 SC 501 (2018) 6 SCC 527 : (2018) 404 ITR 738, at page 532 : (1969) 3 SCC 311 cannot be so interpreted as to tax the subject twice over to the same tax.... If any double taxation is involved, the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over."*
>
> *22. The above referred cases make it clear that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. Now, the only question that remains to be decided is whether in fact there is a specific provision for including the income earned from the Sikkim lottery ticket prior to 1-4-1990 and after 1975, in the income tax return or not. We have gone through the relevant provisions but there seems to be no such provision in the IT Act wherein a specific provision has been made by the legislature for including such an*

income by an assessee from lottery ticket. In the absence of any such provision, the assessee in the present case cannot be subjected to double taxation."

(emphasis supplied)

45) We do not find anything in the language of the Act which expressly enables the respondents to tax a purchaser, who has already paid tax to the seller, a second time, by denying him ITC, in all situations. If that were to be so, there would be no concept of giving ITC at all in the Act.

46) We are of the view that the other High Courts have also overlooked this important principle that ITC is introduced to avoid double tax burden on a tax payer under the GST regime. The Parliament, in our opinion, though intended it to be a benefit/concession, it had not intended to punish a tax payer by denying him ITC if the transaction entered into by him with a seller/supplier is bona fide.

47) The view taken by the Delhi High Court in the judgments rendered by it under the DVAT Act, which contain similar provision under section 9(2) (g), which have been accepted by the Supreme Court, commends to us and we are of the opinion that this is a better way to view the issue and Section 16(2)(c) has to be read down as the Delhi High Court had done. If this issue had been looked at by the other High Courts too mentioned supra in the manner the Delhi High Court had done in the cases under the DVAT Act, while upholding the constitutionality of the provision, maybe they would have read it down as well, in the manner we had done.

48) Reliance placed by the Dy.SGI on the decision of the Supreme Court in Chief Commandant of Central Goods and Service Tax and others v. Safari Retreats Pvt.Ltd17 is of no avail as validity of Section 16(2) (c) of the Act did not fall for

consideration in the said judgment though other provisions i.e Section 17(5) (d) and Section 17(5) (c) of the CGST Act,2017 were considered there.

49) We do not deem it necessary to advert to and discuss all the other judgments cited before us as our view balances the interest of both the tax payer and the State.

50) To complete the narrative, we may point out that this Court in an order dt.16-5-2023 had directed the CGST Department to file an affidavit indicating as to whether any proceeding has been initiated against Respondent no.4 and the outcome thereof, and whether the GST registration of the said respondent still stands or it has been revoked.

51) In reply thereto, on 13.8.2024, the respondents 2 and 3 have filed an affidavit stating that proceedings were initiated against the respondent no.4 under the Act by the Tripura State GST authorities and it was found liable to (2025) 2 SCC 523 pay Rs.19,74,32,052.63/- on account of tax, interest and penalty under SGST and CGST Acts and an amount of Rs.53,93,605/- each of SGST and CGST was recovered for the period August 2017 to February 2018 and Rs.4,86,901/- towards CGST and Rs.5,86,126/- towards SGST was recovered for the period April, 2018 to August,2018. It is stated that this recovery was done till 6-7-2020.

52) The respondent no.4 has also filed a counter affidavit on 22.8.2023 stating that it's GST registration has been suspended/cancelled since 21.1.2020 and criminal cases have also been filed against it.

53) Importantly, the Assistant Commissioner (Respondent no.3) had invoked only Section 73 of the Act against the petitioner and issued a Show Cause notice to petitioner on 7.1.2021 which resulted in the impugned order dt.17.5.2022. Section 73 lays down the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

54) The fact that Section 74 of the Act which lays down the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts, is not invoked by respondent No.3 is very significant.

55) Thus the respondents are not disputing that the petitioner did pay the GST of Rs.1,11,60,830/- to respondent no.4, the supplier, though they contend that the latter has not passed over the same to the Government. There is no allegation by the respondents that petitioner had failed to discharge its liability towards tax on the purchases made by it. It is their case that the respondent no.4 has fraudulently retained the GST paid by petitioner to it.

56) Consequently, it has to be held that the transaction between the petitioner and the respondent no.4 is a bona fide transaction and not a collusive transaction tainted by fraud etc., and that the conduct of respondent no.4 is blameworthy. Petitioner therefore cannot be penalised by invoking Section 16(2) (c) of the Act and denied the ITC.

57) For all the aforesaid reasons, the Writ Petition is partly allowed as under:

(a) Section 16(2) (c) of the Act is held not violative of Art.14, 19(1) (g) or 265 or 300-A of the Constitution of India;

(b) But Section 16(2) (c) of the Act ought not to be interpreted to deny ITC to purchasers in a bona fide transaction like the petitioner and it should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue.

(c) The order dt.7.5.2022 passed by respondent no.3 is set aside.

(d) The respondents are directed to forthwith allow the petitioner ITC to the extent of Rs.1,11,60,830/- denied to it.

(e) No costs.

All pending applications are disposed of."

17. I am in respectful agreement with the view taken by the Division Bench of the Tripura High Court in the case of ***M/s Sahil Enterprises Vs. Union of India and others – W.P.(C) 688/2022 dated 06.01.2026*** and I am of the considered opinion that the present petition also deserves to be disposed of in terms of the said judgment as well as the earlier judgment of the Gauhati High Court in ***National Plasto Moulding's case supra.***

18. In the result, I pass the following:

ORDER

(i) Petition is hereby disposed of in terms of the judgment of the Gauhati High Court in the case of ***National Plasto Moulding Vs. State of Assam – (2024) 21 CENTAX 182(Gau)*** and the judgment of the Tripura High Court in the case of ***M/s Sahil Enterprises Vs. Union of India and others – W.P.(C) 688/2022 dated 06.01.2026.***

(ii) The impugned provisions contained in Section 16(2)(C) of the CGST / KGST Act and Rule 36(4) of the CGST / KGST Rules are hereby read down in a manner that allows the benefit of ITC to bonafide recipients such as the petitioner, which has complied with all other conditions under Section 16(2) of the CGST / KGST Act despite any fault / lapse or non-payment of tax to the government by the suppliers.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

DH / SV
List No.: 3 Sl No.: 2