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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18080 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 5144 of 2026
With
R/SPECIAL CIVIL APPLICATION NO. 9473 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9569 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15188 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 4595 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 17904 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 13391 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 13744 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 16141 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 16162 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 16397 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 1679 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 1751 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 3222 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 3729 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 15464 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 5367 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 7362 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 12430 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 18046 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 18757 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 1787 of 2023
With

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R/SPECIAL CIVIL APPLICATION NO. 19137 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 19756 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 21370 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 2428 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 3011 of 2024
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R/SPECIAL CIVIL APPLICATION NO. 3749 of 2024
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R/SPECIAL CIVIL APPLICATION NO. 16135 of 2024
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With
R/SPECIAL CIVIL APPLICATION NO. 6080 of 2025

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With
R/SPECIAL CIVIL APPLICATION NO. 7369 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11022 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**
and
HONOURABLE MR.JUSTICE PRANAV TRIVEDI **Sd/-**

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Approved for Reporting	Yes	No
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MARUTI ENTERPRISE THROUGH ITS AUTHORIZED PARTNER,
JIGNESHBHAI BHARATBHAI TARPARA
Versus
UNION OF INDIA & ORS.

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Appearance:
MR TUSHAR HEMANI, SENIOR ADVOCATE WITH
MS POONAM M MAHETA, MR NARENDRA L JAIN, MR ASHUTOSH S DAVE, MR JYOTINDRASINH J VALA, MS. DIMPLE K. GOHIL, MR UCHIT N SHETH, MR RAHUL L GAJERA, MR VINAY SHRAFF FOR MR PARTH S SHAH, MR.AVINASH PODDAR, MR HIREN J TRIVEDI, MR CHETAN K PANDYA, MR SAHIL J RAO, MR D K TRIVEDI, MR ABHAY Y DESAI, MR KRUTARTH K DESAI AND MS S M AHUJA, ADVOCATES for the respective Petitioners

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH
MR VINAY BAIRAGARA, MR RAJ TANNA, MS POOJA ASHAR, MS NIMISHA PAREKH, MR ANTRIX KAPADIYA, AND MS TANUSHREE SHRIMAL for the Respondents – STATE AUTHORITIES

MR UTKARSH SHARMA, SENIOR STANDING COUNSEL WITH
MS HETVI H SANCHETI, MS HETAL PATEL, MR ANKIT SHAH, MR DEEPAK KHANCHANDANI, MR ARCHIT JANI AND MR PARAM V. SHAH the Respondent – UNION OF INDIA

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

COMMON CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since a common issue is involved in all the group petitions, Special Civil Application No.18080 of 2023 is taken up as a lead matter.

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2. In this group of petitions, we are called upon to examine the *vires* of the provision of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act").

3. It is the case of the petitioners that the provision of Section 16(2)(c) of the CGST Act is arbitrary, *ultra vires* and violative of Articles 14, 19(1)(g), 265, and 300A of the Constitution of India. In the alternative, it is prayed that the said provision be read down so as to apply only to such transactions that are found to be fraudulent, collusive or involving connivance between the purchasing dealer and the supplier, thereby excluding those purchasers, who have acted *bona fide*.

4. The entire case of the petitioners' hinges on a sole aspect, namely the default of the supplier in depositing the tax so collected with the government. As a consequence, Input Tax Credit (ITC) is denied to purchasers like the petitioners.

5. Various submissions have been advanced by the learned advocates appearing for the petitioners. Numerous decisions of other High Courts as well as of the Supreme Court have been cited before us, however, since the case law cited is either repetitive or out of context, and in order to avoid prolixity, we are not dealing with the same. It is also clarified that this Court has not examined the merits of individual matters and the present judgment and order is confined only to the examination of the *vires* of Section 16(2)(c) of the CGST Act.

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SUBMISSIONS ON BEHALF OF THE PETITIONERS :

6. The relevant submissions touching upon the issue are incorporated as under:-

7. Reference is made to Sections 16 to 21 read with Section 41, Section 49, Section 53 of the CGST Act and the Central Goods and Service Tax Rules, 2017 (for short, "the CGST Rules, 2017") (in particular Rules 36, 37, 37A, 59, 60, 86 and 86B) and Chapter VI of the CGST Rules, 2017 which prescribes a purely mechanical, GSTIN-linked, form-driven process: the supplier files his statement of outward supplies in Form GSTR-1 (Section 37 of the CGST Act r.w. Rule 59 of the CGST Rules, 2017); the purchasing dealer's inward supply details get auto-populated in Form GSTR-2A and the Input Tax Credit statement in Form GSTR-2B (Section 38 of the CGST Act r.w. Rule 60 of the CGST Rules, 2017); and the purchasing dealer's ITC claim is restricted to, and communicated entirely on the basis of, what the supplier has filed. The purchasing dealer has no statutory, contractual or factual means of verifying the supplier's Form GSTR-3B, the actual payment of tax, or the utilisation of ITC by the supplier.

8. It is submitted that sub-section (2) of Section 16 of the CGST Act is a composite provision which lays down, in a specific sequence, six distinct conditions in clauses (a), (aa), (b), (ba), (c) and (d), each of which must be cumulatively satisfied before a registered person becomes entitled to take ITC. On a plain reading, clause (a) requires the recipient to be in possession of a tax invoice or debit note issued by a registered supplier; clause (aa) requires the details of such

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invoice or debit note to have been furnished by the supplier in his statement of outward supplies and communicated to the recipient; clause (b) requires the recipient to have actually received the goods or services, or both; clause (ba) requires that the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 of the CGST Act, have not been restricted; clause (c) requires that, subject to Section 41 of the CGST Act, the tax charged in respect of such supply has been actually paid to the Government; and clause (d) requires that the recipient has furnished the return under Section 39 of the CGST Act. It is thus contended that the six conditions are not only cumulative but have been deliberately arrayed by Parliament in a particular order.

9. That the question of the genuineness of the transaction stands attracted to clauses (a), (aa), (b) and (ba) alone:, ie. a tax invoice issued by a registered supplier under clause (a), supplier-filed and GSTR-2A/2B-communicated details under clause (aa), and actual receipt of goods or services under clause (b), and the absence of any restriction of the said credit under Section 38 of the CGST Act under clause (ba), together constitute the statutory touchstones of genuineness. The Revenue cannot therefore, while defending the *vires* of clause (c), reintroduce the issue of genuineness as an answer to the constitutional challenge namely, that the enquiry has been placed by Parliament under clauses (a), (aa), (b) and (ba), not under clause (c). Secondly, because genuineness is already secured by clauses (a), (aa), (b) and (ba), clause (c) operates

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upon a pool of transactions that are *ex hypothesi* genuine. The only additional variable introduced by clause (c) is whether the supplier has, in fact, remitted the tax to the Government, a variable that is entirely outside the purchasing dealer's domain of control, knowledge or verification. To visit a *bona fide* recipient with denial of credit on that score alone, when the statute itself has already certified his *bona fide* through clauses (a), (aa), (b) and (ba), is precisely what renders clause (c) manifestly arbitrary and violative of Article 14 of the Constitution of India.

10. It is contended that failure to distinguish genuine purchasers from collusive/fraudulent purchasers is the function of the revenue. The provision does not draw any distinction whatsoever between a diligent purchasing dealer who has transacted with a validly registered supplier on the strength of a tax invoice reflected in GSTR-2A/2B, and a dealer who has colluded with a defaulting or bogus supplier. The singular failure of the legislature to differentiate between these two manifestly unequal classes, while visiting upon both the identical penal consequence of denial of ITC, is precisely the vice condemned by the Delhi High Court in the case of On Quest Merchandising India (P.) Ltd. vs. Government of NCT of Delhi, [2017] 87 taxmann.com 179/ [2018] 10 GSTL 182 (Del), paragraph No.39, as affirmed by the Supreme Court by dismissal of SLP in the case of Commissioner of Trade & Tax, Delhi vs. Arise India Ltd., 2022 (60) GSTL 215 (SC), and again approved by the Supreme Court in the case of Commissioner Trade & Tax, Delhi vs. Shanti Kiran India (P.) Ltd., [2025] 179

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taxmann.com 665 (SC). Reliance is also placed on the decision of the Karnataka High Court in the case of Karnataka vs. Tallam Apparels, 2021 SCC OnLine Kar 15785.

11. It is submitted that the rule of equality is violated not merely when equals are treated unequally, but also when unequals are treated alike. *Bona fide* purchasers who have discharged every obligation imposed on them by the Act, and dishonest purchasers who have connived with non-paying suppliers, are fundamentally unequal. Section 16(2)(c) treats both alike by subjecting both to a uniform denial of ITC. That is the very definition of hostile discrimination. In this context reliance is placed on the decision of this Court in the case of Arpit Pravinbhai Shah vs. Assistant Commissioner of Income Tax, (2026) 182 taxmann.com 691 (Guj.).

12. That the purchaser has no means, and cannot be legally equipped with the means, of verifying whether his supplier has in fact discharged his output liability to the Government. GSTR-3B of the supplier is not accessible to the recipient. The Petitioner cannot be called upon to do the impossible.

13. It is submitted that Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. Denial of ITC in the hands of a purchasing dealer who has already paid GST to a registered supplier, merely because the supplier has retained the tax, results in the same taxable supply being taxed twice viz. once in the supplier's hands (notionally, by retention) and again in the hands of the *bona fide* purchaser. Double taxation is

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permissible only if expressly sanctioned by the legislature in clear terms. Nothing in Section 16 or the charging provision Section 9 of the CGST Act expressly sanctions such double collection. The very object of ITC, as reflected in paragraph 5(b) of the Statement of Objects and Reasons of the CGST Bill, 2017, is to eliminate cascading effect and double taxation. Reference is also made to the minutes of 26th GST Council meeting held on 10.03.2018, wherein the difficulties faced by genuine purchasers were highlighted due to operation of provision of Section 16(2)(c) of the CGST Act.

14. That Article 19(1)(g) of the Constitution of India protects the right to carry on trade and business. A law which, though in form a taxing measure, operates as a disincentive to entering into ordinary commercial transactions with registered suppliers, and whose honest discharge is impossible, fails the proportionality test. The State bears the burden of showing that the measure is a reasonable restriction within Article 19(6) of the Constitution of India. Proportionality requires that the least restrictive measure is adopted.

15. That Section 9 of the CGST Act is the charging section. Section 9(1) of the CGST Act provides that the levy of tax is on supply of goods and services and such tax is payable by the taxable person which is the supplier. Section 9(3) of the CGST Act empowers the Government to notify specific transactions where tax would be payable by the recipient on reverse charge basis. Thus, barring notified categories of transactions under Section 9(3) of the CGST Act, ordinarily charge of tax is on the supplier of the goods or services. The supplier charges such

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tax from the recipient and he is liable to pay such tax to the Government. By disallowing ITC to the recipient because of default made by the supplier, effectively the burden of tax which lies on the supplier under Section 9(1) of the CGST Act is shifted onto the recipient without any fault on the part of the recipient which is manifestly arbitrary, discriminatory and violating Article 14 of the Constitution of India.

16. That Rule 60(1) of the CGST Rules, 2017 provides that details of outward suppliers of the supplier will be furnished to the recipients in Form GSTR-2A. Rule 60(7) of the CGST Rules, 2017 provides for furnishing auto-drafted ITC statement to the recipient in Form GSTR-2B. Once ITC is reflected in Form GSTR-2B and the recipient has claimed ITC on the basis of such statement, it becomes a vested right in so far as genuine transactions are concerned. Disallowance of ITC on the basis of subsequent inquiry into alleged default of the supplier tantamount to taking away credit already granted to the recipient and that too for no fault on its part. The impugned provision thus operates retrospectively in as much as it disallows ITC many years after it is claimed and that too after matching with the ITC statement made available by the Government on the GST portal. Such retrospective disallowance of ITC leading to unforeseen burden on the genuine recipients is in any case is manifestly arbitrary and violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.

17. Finally, the doctrine of "*Lex non Cogit Ad Impossibilia*" is relied upon, and it is contended that a law does not compel a

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man to do anything impossible or to do something which is he cannot possible perform. It is submitted that the purchaser has no control over the seller, who is supposed to remit the tax to the government, and he cannot compel him to pay the tax, hence the provision of 16(2)(c) of the CGST Act mandates the purchaser to do some thing which is beyond his control, hence it is urged that the same may be either declared as *ultra vires* or should be read down.

18. Learned advocate Mr.Uchit Sheth, finally, by placing reliance on the judgement rendered on 06.07.2006 of Court of Justice of the European Union(EC) (Third Chamber) in the case of Axel Kittel vs. Belgian State (C-439/04) and Belgian State vs. Recolta Recycling SPRL (C-440/04) has submitted that the principle enunciated in the said decision has been widely accepted world wide. It is submitted that the Third Chamber ruled that VAT deductions can be denied if a participant knew or should have known they were involved in fraud, and not in a situation, where a taxable person did not and could not know that the transaction concerned was connected with fraud committed by the seller.

SUBMISSIONS ON BEHALF OF THE REVENUE :

19. Learned Advocate General Mr.Kamal Trivedi, has made the following submissions : -

20. That the Goods and Services Tax is charged by the Revenue on the 'supply of goods or service or both as per Section 9 of the CGST Act and hence, it is the 'Supplier' who is liable to pay the tax on the said supply effected by him. As per

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Section 12 of the CGST Act, the liability to pay the said tax arises at the time of supply, which is either the date of issuance of invoice or the date on which, the supplier receives the payment with reference to supply, whichever is earlier.

21. That as per Section 2(62) of the CGST Act, the said tax charged on the supply of goods would be considered as "Input Tax" to the recipient i.e. purchasing dealer, and thereafter, in terms of Section 41 read with Section 16(1) of the CGST Act, a Purchasing Dealer can avail credit of the said Input Tax, which is credited to his Electronic Credit Ledger as provided under Rule 86 of the CGST Rules, 2017. Hence, the Purchasing Dealer is entitled to take credit of input tax charged to him on supply of goods (i.e. 1st transaction), which are used or intended to be used in furtherance of the business of the purchasing dealer (i.e. 2nd transaction).

22. Reference is made to Finance Act, 2022, and it is contended that Section 41 of the CGST Act came to be substituted, whereafter the credit of the input tax availed by a Purchasing Dealer in its electronic credit ledger on a provisional basis, has been given a go bye and resultantly, there is no restriction for utilization thereof, except those mentioned in Section 16(2) of the CGST Act. Further, Section 41(2) of the CGST Act also requires the Purchasing Dealer to reverse the credit in case of non-payment of tax by the Supplier Dealer along with applicable rate of interest

23. That Sub-Rule (2) of Rule 86 of the CGST Rules, 2017 provides that Electronic Credit Ledger shall be debited to the

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extent of discharge of any liability in accordance with Section 49 or Section 49A of the CGST Act.

24. Specific reference is made to the provision of Section 155 of the CGST Act which puts the burden of proof upon the person (i.e. Purchasing Dealer) claiming the input tax credit. It is submitted that additionally, one may also have to consider that in terms of Section 53 of the GST Act, the State Government is obliged to transfer the tax component utilized by the Inter-State Supplier to the destination State. In other words, if the Inter-State Supplier is allowed to take credit based on his Supplier's Invoice, the originating State Government will have to transfer the amount, it never received in the tax period in a financial year, to the destination States, causing huge loss of revenue in each tax period. Incidentally, this aspect also gets taken care of by virtue of Section 16(2)(c) r.w. Section 41(2) of the CGST Act.

25. He has referred to the various forms of GSTR-1, GSTR-2A, GSTR-2B and GSTR-3B.

26. It is submitted that pertinently, under the present tax regime, the law permits the Purchasing Dealer i.e. recipient dealer to avail as well as utilize the input tax credit in discharging its duty liability, solely on the basis of the details furnished by the Supplier Dealer in its FORM GSTR-1, without any intervention of any authority at that stage. Thus, all such transactions are considered to be 'genuine transactions and benefit thereof can be availed of by the Purchasing Dealer. However, where it is found that the Supplier has not filed GSTR-3B ie. not made the payment of tax qua the said

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transaction, the presumption of authenticity which arose in the first instance, will get washed off, and the Revenue would initiate recovery proceedings against the Purchasing Dealer for recovering the benefit availed by the said Dealer by utilizing ITC for discharging its duty liability for the outward supplies (i.e. subsequent transaction) made by him to third parties.

27. That at the same time, the Revenue would also initiate recovery proceedings against the Supplier Dealer, for not discharging its duty liability qua the first transaction and as per Rule 37A of the CGST Rules, 2017, once the same is discharged by the said Supplier Dealer for the said invoice, the Purchasing Dealer would get the credit of the said tax component immediately in the succeeding month thereof. Thus, with such mechanism in place, the Purchasing Dealer will not suffer any prejudice as he will get the credit as and when amount is deposited with the Government treasury and the Government will not be unjustly enriched twice.

28. While distinguishing the judgments on which the reliance is placed by the petitioners, it is submitted that there is no need to read down the said Section in the manner in which the Delhi High Court read down Section 9(2)(g) of the Delhi Value Added Tax, 2004 ("the DVAT Act" for short) in case of ***On Quest Merchandizing India (P) Ltd. (supra)***, and confirmed by the Supreme Court in case of ***Arise India Ltd. (supra)*** and thereafter, approved by the Supreme Court in the case of ***Shanti Kiran India (P) Ltd. (supra).***

29. That the nature of claim of ITC by the dealer is in the nature of concession, and the same is not a fundamental right

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or a vested right or an absolute right, but is "entitlement", subject to conditions and restrictions provided under the Act, which are to be interpreted literally in tune with the objective behind the introduction of the provision of ITC under the CGST Act read with the scheme of the Act.

30. Further, it is contended that mere hardship to the registered dealers alleged to be caused because of the operation of the provision of Section 16(2)(c) of the CGST Act, cannot be a ground for invalidation of the said Section, inasmuch as, there is no question of any claim of equity in the matter of taxation.

31. It is submitted that even otherwise, the language used in the said Section 16(2)(c) of the CGST Act is clear and unambiguous and not capable of creating any confusion. In this behalf, reliance is placed on the judgment of the Supreme Court in the matter of "interpretation of taxing provisions" rendered in the case of Director of Income Tax vs. American Express Bank Ltd., 2025 SCC OnLine (SC) 2806.

32. In order to appreciate the principle of 'reading down' any legislative provision, the reliance is placed on the following judgment of the Supreme Court:

a) Authorized Officer, Central Bank of India vs. Shanmugavelu, (2024) 6 SCC 641-relevant paragraph Nos.19 to 22, 44 & 93 to 200, wherein, while examining the claim of reading down Rule 9(5) of the SARFAESI Rules, the Supreme Court has held to the effect that "*Harshness of a provision is no reason to*

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read down the same, if its plain meaning is unambiguous and perfectly valid."

33. While considering Section 16(2)(c) of the CGST Act, it is submitted that the same cannot be read in isolation, but is required to be read along with Section 41(2) as well as Section 155 of the CGST Act. This is because of the fact that even if the Section 16(2)(c) of the CGST Act is held *ultra vires* or is read down as being claimed on behalf of the petitioners, then in that case also, Section 41 (2) of the CGST Act will remain in the statute book, which carries the same philosophy underlying Section 16(2)(c) of the CGST Act, which is, in fact, suggestive of the scheme of the legislation in tune with its SOR. Similarly, Section 155 of the CGST Act cannot be lost sight of, because it provides that where any person claims that he is eligible for input tax credit under the Act, burden of proving the same shall lie on such person.

34. It is submitted that the petitioners' reliance on the judgment of the Delhi High Court in the case of ***On Quest Merchandising India (P) Ltd. (supra),*** is misplaced inasmuch as one cannot draw any parity between the provisions of the DVAT Act in question in the said judgment, on one hand and on the other hand, the provisions of the CGST Act in the present case, There is a conspicuous absence of Section 41(2) and Section 155 of the CGST Act and Rule 37A of the CGST Rules, 2017, in the provisions of the DVAT Act. In view of this, by relying upon the aforesaid judgment of the Delhi High Court, wherein under Section 9(2)(g) of the DVAT Act is read down, one cannot draw the parity of argument for reading down Section 16(2)(c) of the CGST Act also.

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35. Similarly, it is contended that the reliance placed on the Judgment of the Supreme Court in the case of ***Shanti Kiran (supra)*** is also misconceived, inasmuch as, in the said case, the Supreme Court was dealing with the provision of Section 9(2)(g) of the DVAT Act along with other provisions thereof, which are, as aforesaid, different from the provisions of the Act in the present matter.

36. While distinguishing the judgment in the case of ***Tallam Apparels (supra),*** it is submitted that the said judgment followed a similar line of reasoning as the decision in the case of ***On Quest Merchandising India (P) Ltd (supra)***, which was delivered by the Delhi High Court with reference to Section 9(2)(g) of the DVAT Act. However, the judgment of the Karnataka High Court has been set aside by the Supreme Court in the case of State of Karnataka vs. Ecom Gill Coffee Trading Pvt. Ltd., (2023) 18 SCC 809. Referring to the decision in ***On Quest Merchandising India (P) Ltd. (supra)***, the Supreme Court has held that the burden of proof under Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court while interpreting Section 9(2)(g) of the DVAT Act. It was further held that the burden under Section 70 of the KVAT Act, 2003 cannot be said to have been discharged merely by the production of invoices or even by payment to the supplier dealer through cheque.

37. That reliance placed by the petitioners on the Judgments rendered by (i) Telangana High Court in the case of Sahil Enterprises vs. Union of India, (ii) Karnataka High Court in the case of M/s. Instacart Services Pvt. Ltd. vs. Union of India and

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(iii) Gauhati High Court in the case of National Plasto Moulding vs. State of Assam, are also not helpful to the petitioners, since all the three Judgments have been rendered while following the Judgment of the Delhi High Court in the case of ***On Quest Merchandising India (P) Ltd. (supra)***, and without considering the Judgment of the Supreme Court in the case of ***Ecom Gill Coffee Trading Pvt. Ltd. (supra)***.

38. In support of his submissions he has placed reliance on the following judgments.

A. In the case of R.V. Enterprises vs. State of Gujarat, 2025 SCC OnLine (Guj.) 4780;
A. In the case of Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. State of Maharashtra, 2012 SCC OnLine (Bom.) 733;
B. In the case of Nahasshukoor & Anr. vs. Assistant Commissioner, 2023 SCC OnLine (Ker.) 11369;
C. In the case of *M. Trade Links Vs. Union of India*, 2024 SCC OnLine (Ker.) 2744;
D. In the case of Thirumalakonda Plywoods v/s. Assistant Commissioner, Sales Tax, 2023 SCC OnLine (A.P.) 1476;
E. In the case of Asha Enterprises vs. State of Bihar, 2023 SCC OnLine (Pat.) 4395;
F. In the case of Shree Krishna Chemicals vs. Union of India, 2025 SCC OnLine (MP). 1301; and
G. In the case of Baby Marine (Eastern) Exports vs. Union of India, 2025 SCC OnLine (Mad.) 15588

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39. It is contended that reliance placed on the decision of this Court in the case of ***Arpit Pravinbhai Shah (supra***) is also completely misplaced and not applicable to the facts of the present case, inasmuch as, in the said case, upon considering the provisions of the Income Tax Act, 1961 and more particularly Section 205 thereof, this Court held that though the amount of TDS, which has been deducted from the account of assessee, but not deposited with the Government, the assessee would be entitled for the credit of the said amount of TDS deducted by his employer.

40. However, in the present case, the provisions of the GST Act are completely different inasmuch as, in the GST Act, there is no such provision like Section 205 of the Income Tax Act, 1961 which protects the assessee from making the payment of tax to the extent of the deducted amount.

> "*205. Bar against direct demand on assessee Where tax is deductible at the source under the foregoing provisions of this Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.*"

41. By making the foregoing submissions, learned Advocate General Mr.Trivedi has urged that the provision of Section 16(2)(c) may not either be declared as *ultra vires* or read down.

ANALSYSIS AND CONCLUSION : -

42. It is a settled principle that, before striking down a statutory provision as *ultra vires* or reading it down, the Statement of Objects and Reasons underlying the statute must

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be duly examined. In this behalf, the following Clause 5(b) of the Statement of Objections and Reasons ('the SOR' for short) clearly provides as under.

> *"5. The Central Goods and Services Taxes Bill, 2017, inter-alia, provides for the following, namely -*
>
> *xxx xxx*
>
> *(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.*
>
> *xxx xxx"*

who has paid the taxes. Taxes paid is essentially in the C/ Govt.

43. The SOR emphatically mentions about "input tax credit making it availbale in respect of taxes paid". Thus, availment of ITC is intrinsically connected with the factum of "taxes paid". Accordingly, the provisions under Chapter-V regualting ITC have been introduced by the Parliament. Section 16(2)(c) of the CGST Act, which the petitioners pray for declaring as *ultra vires* or to be read down, reads as under : -

> ***"Section 16(2) in the Central Goods and Services Tax Act, 2017***
>
> *(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;*
> *(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.]*

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(c)subject to the provisions of [section 41 or section 43A] [Substituted 'section 41' by Act No. 31 of 2018, dated 29.8.2018.], 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 added to his output tax liability, along with interest thereon, in such manner as may be prescribed:
Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

SCRUTINY OF THE CASE LAW CITED ON BEHALF OF THE PETITIONERS :

44. The sole grievance of the petitioners is that they cannot be subjected to denial of ITC solely on the ground that the supplier has failed to deposit the tax with the State Government. The issue raised by the petitioners primarily premised on the decisions in the cases of ***On Quest Merchandising India (P) Ltd. (supra)***, ***Shanti Kiran India (P) Ltd. (supra)***, and the recent decision of the Tripura High Court in the case of ***Sahil Enterprises (supra),*** which has followed the decision in case of ***On Quest Merchandising India (P) Ltd. (supra)***. There is contrary view expressed by Kerala High Court followed by Patna High Court. It is, therefore, necessary to examine the ratio and the principles laid down in the aforesaid judgments.

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45. In the case of ***On Quest Merchandising India (P) Ltd. (supra)***, the Delhi High Court examined the provision of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004. The said provision contemplated denial of input tax credit, where the tax paid by the purchasing dealer had not been deposited by the selling dealer with the Government.

46. The Delhi High Court after examination of the provision of Section 9(2)(g) of the DVAT Act, which uses the phrase ‘dealer’ or ‘class of dealers’ which could include either the purchasing dealer or the selling dealer is denied the ITC unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government, has held that the purchasing dealer cannot be asked to do impossible i.e. to anticipate the selling dealer, who will not deposit with the Government the tax collected by him from the purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, it is also held that Section 9(2)(g) of the DVAT Act requires a purchasing dealer to do is that after transacting with the selling dealer, somehow he ensures that selling dealer does not 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 is thus held that the provisions of Section 9(2)(g) of the DVAT Act places an onerous burden on a *bona fide* purchasing dealer.

47. The Delhi High Court, in this context, also relied upon its earlier decision in the case of ***Shanti Kiran India (P) Ltd. (supra)***, wherein it was held that, in the absence of any statutory mechanism enabling a purchasing dealer to verify whether the selling dealer had deposited the tax and in the

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absence of any reliable system to ascertain cancellation of the dealer's registration, denial of ITC would be unjustified.

48. On this basis, the Delhi High Court invoked the doctrine of reading down and interpreted Section 9(2)(g) of the DVAT Act in a manner that excluded *bona fide* purchasing dealers who had entered into transactions with validly registered selling dealers against proper tax invoices.

49. The Supreme Court, while affirming the judgment of the Delhi High Court in the case of ***Shanti Kiran India (P) Ltd. (supra)***, took note of the decision in the case of ***On Quest Merchandising India (P) Ltd. (supra)*** and further observed that the Special Leave Petition (Civil) No. 36750 of 2017 challenging the said decision had been dismissed.

50. In the recent decision in case of ***Sahil Enterprises (supra)***, the Tripura High Court after considering the decision in the case of ***On quest Merchandising India (P) Ltd. (supra)*** and after examining the provision of Section 16(2)(c) of the CGST Act has reiterated the principle of law and has applied the doctrine of reading down to the provision of 16(2)(c) of the CGST Act.

51. Thus, insofar as Section 9(2)(g) of the DVAT Act is concerned, the judgment of the Delhi High Court in the case of ***On Quest Merchandising India (P) Ltd. (supra)*** has attained finality and the said provision stands read down. However, the issue that arises for consideration before this Court is whether the reasoning adopted by the Delhi High Court, as followed by the Tripura High Court, can be applied to

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the scheme of the GST Act, and consequently, whether Section 16(2)(c) of the CGST Act can be read down.

52. The provision of Section 9(2)(g) of the DVAT Act, which was extensively examined by the Delhi High Court, reads as under:

> *"Section 9(2)(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."*

53. The Delhi High Court was primarily persuaded by two factors. First, while a purchasing dealer may verify from the Department's web portal whether the selling dealer is fictitious or whether his registration stands cancelled, the purchasing dealer cannot be expected to monitor whether the selling dealer has actually deposited the tax collected with the Government or has lawfully adjusted the same against his output tax liability. At best, the purchasing dealer may ascertain any mismatch in Annexures 2A and 2B.

54. Secondly, the Delhi High Court was influenced by the fact that the purchasing dealer has no access to the returns filed by the selling dealer. In this regard, Section 98(1) of the DVAT Act mandates confidentiality of such particulars, and only the Commissioner is empowered, under Section 98(3)(j), to place such details in the public domain.

55. It was further noted by the Delhi High Court that the Department retains the authority to recover any tax in arrears directly from the selling dealer. While interpreting the

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expression “dealer or class of dealers” under Section 9(2)(g) of the DVAT Act, the Court also considered that the said expression could encompass either the purchasing dealer or the selling dealer, thereby conferring unguided discretion upon the Department to proceed against either of them. Such unguided discretion was held to be vulnerable to challenge on the touchstone of Article 14 of the Constitution of India.

SCHEME OF AVAILING ITC UNDER GST REGIME:

56. We may now refer to the scheme governing the availment of input tax credit under the GST regime, however, is structured around prescribed statutory forms for returns, as set out hereunder:

Sr.No.	*Prescribed Form*	*Particulars*
1.	*Invoice*	*The Supplier Dealer issues Tax Invoice for the supply of goods. [Section 31 r/w. Rule 46]*
2.	*GSTR-1*	*The said Supplier Dealer files return in prescribed form, disclosing the outward supplies effected by him, including the amount of tax included therein. [Section 37 r/w. Rule 59(1)]*
3.	*GSTR-2A*	*The details of outward supplies furnished by supplier dealer in its GSTR-1 get auto-populated to the Purchasing Dealer. [Section 38 r/w. Rule 60(1)]*
4.	*GSTR-2B*	*Auto generated statement gets available to the Purchasing Dealer, containing the details of Input Tax Credit, solely on the basis of the details furnished by Supplier Dealer in its GSTR-1. [Section 38 r/w. Rule 60(7)]*
5.	*GSTR-3B*	*The said Supplier Dealer has to file return*

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		in prescribed form, paying the tax on the outward supplies. [Section 39 r/w. Rule 59(1)]
6.	*GSTR-3B*	*The said Purchasing Dealer also files return in the prescribed form, for discharging his duty liability on his outward supplies (i.e. 2nd/subsequent transaction), where he utilizes the input tax credit availed from first transaction as a purchaser, on the basis of the auto-generated statement in Form GSTR-2B and makes payment of the differential amount (i.e. total tax liability minus amount mentioned in GSTR-2B). [Section 39 r/w Rule 59(1)].*

57. At this stage, it is appropriate to refer to the provisions of Section 41, read in conjunction with Section 16(1) of the CGST Act. These provisions clarify that a purchasing dealer is entitled to avail of ITC, which is credited to their Electronic Credit Ledger maintained under Rule 86 of the CGST Rules, 2017 in Form GST PMT-02. Consequently, a purchasing dealer is entitled to credit for the tax charged on the supply of goods or services (the initial transaction) provided those goods or services are used, or intended to be used, in the course or furtherance of their business in subsequent transactions.

58. Section 41 of the CGST Act, as substituted by the Finance Act, 2022, governs the availment of input tax credit and removes the previous concept of "provisional" ITC. Instead, Section 41(2) of the CGST Act mandates that if a supplier fails to pay the tax due on a supply, the purchasing dealer must reverse the ITC they availed, along with any applicable interest. However, the proviso to this section clarifies that once the supplier successfully pays the tax, the purchasing dealer is entitled to re-avail the previously reversed credit.

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59. Furthermore, Section 53 of the CGST Act is highly relevant, as it mandates that the tax component utilized by an inter-State supplier must be transferred to the Destination State. Essentially, when an inter-State supply occurs, the credit availed by the recipient has fiscal implications across state boundaries. If a supplier in the originating state fails to deposit the tax, yet the recipient (or a downstream dealer) is permitted to claim credit based solely on invoices, the originating state would be forced to transfer funds to the destination state that it never actually received. This would result in a direct loss of revenue for the originating state.

60. Therefore, considering the overall scheme of the Act, any "reading down" (narrow interpretation) of Section 16(2)(c) would trigger cascading fiscal consequences. The legal position under the former VAT regime was materially different, as input tax credit was confined within the originating state. In contrast, the GST regime is destination-based; therefore, input tax credit must operate seamlessly across state lines for inter-State supplies, requiring strict compliance to maintain fiscal balance.

61. In the case of inter-State transactions, input tax credit is governed through the IGST mechanism, wherein the Centre collects tax equivalent to the aggregate of CGST and SGST and thereafter apportions the same to the destination State. The operation of input tax credit under the GST regime has been lucidly explained by the learned Single Judge of the Kerala High Court in the case of ***M Trade Links (supra)***.

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"81. When the ITC is not an absolute right but is an entitlement subject to the conditions and restrictions prescribed under the Statute, the conditions, restrictions and time limit specified by law form the fulcrum on which the grant of ITC and tax collection for each financial year are balanced. The Scheme of the Act also provides that only tax collected and paid to the government could be given as input tax credit. When the Government has not received the tax, a dealer cannot be W.P(C) Nos. 31559/2019, 25891/2020, 26515/2021,5995/2022, 21545/2022, 27854/2022, 24327/2022, 36612/2022, 24677/2023, 37039/2023 given an input tax credit. It may be seen that under the various State VAT laws, the twin requirements were provided for granting ITC: (a) it was aimed to remove the cascading effect, and (b) collection of Tax for each financial year. The State legislations had to balance this linear bar. Under the VAT law, the ITC did not cross the originating State. The Central Sales Tax levied on inter-state sale of goods was assigned to the original State.

82. Under the GST regime, the tax collected has to be assigned to the jurisdiction where the consumption takes place. The ITC, therefore, crosses a State during inter-State supplies. Now, the scheme of the Act prescribes the conditions, restrictions, time limit, and the manner for availing the ITC and all together form the legal fulcrum that balances three requirements:

(a) granting of ITC for removing cascading effect,
(b) achieving collection of tax by self-assessment method for each financial year, and
(c) ITC transfer compliance to the destination State on inter-state supplies through the IGST mechanism where the Centre collects tax equivalent to CGST + SGST.

An inter-State supplier in the originating/exporting State uses his CGST/SGST credit for payment of IGST collected. The recipient based in the destination State will discharge his output tax liability (CGST + SGST) by claiming credit for the IGST he paid to the inter-state supplier in the originating State. Now, the Central and the originating State W.P(C) Nos. 31559/2019, 25891/2020, 26515/2021,5995/2022, 21545/2022, 27854/2022, 24327/2022, 36612/2022, 24677/2023, 37039/2023 have an obligation to transfer the CGST and SGST component utilised by the inter-state supplier to the IGST account so as to make it available for the destination State. Section 53 of the CGST/SGST Act prescribes the statutory obligation of the Central and the State Governments in this regard, which reads as follows:

> *"Section 53: Transfer of Input Tax credit On utilisation of input tax credit availed under this Act for payment of tax dues under*

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the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed." (State laws have Section 53 parallel provision)

83. Considering the aforesaid scenario, without Section 16(2)(c) where the inter-state supplier's supplier in the originating State defaults payment of tax (SGST+CGST collected) and the inter-state supplier is allowed to take credit based on their invoice, the originating State Government will have to transfer the amounts it never received in the tax period in a financial year to the destination States, causing loss to the tune of several crores in each tax period.

84. In my view, this renders the whole GST laws and schemes unworkable. Therefore, as contended, the conditions cannot be said to be onerous or in violation of the Constitution, and Section 16(2)(c) is neither unconstitutional nor onerous on the taxpayer.

85. The collection of tax by self-assessment and the Recovery Provisions on default are two different arms. The W.P(C) Nos. 31559/2019, 25891/2020, 26515/2021,5995/2022, 21545/2022, 27854/2022, 24327/2022, 36612/2022, 24677/2023, 37039/2023 respondents cannot contend that the conditions, restrictions, and time limits for ITC and time-bound tax collection in a financial year can be substituted or replaced with recovery actions against defaulters, the outcome of which is uncertain and not time-bound.

86. Section 16 of the CGST Act and Rules made thereunder provide conditions, restrictions, time limits and manners for availing the Input Tax Credit, which is a self-monitoring and self- policing provision. In order to claim ITC, each registered person has a reason and incentive to request documentation and tax payment compliance from the person behind him in the value- added tax chain to ensure that the ITC chain is not broken. A new provision, Section 16(2)(aa), stands introduced with effect from 01.01.2022, providing for communication of the matching of the recipient's invoice with suppliers and outward supply via GSTR 2A/2B. With effect from 01.10.2022, Section 38 stands substituted with a provision for auto-generated statement GSTR 2B, indicating eligible and ineligible credits in respect of the inward supply. Section 41 is also substituted providing for reversal and re- availing of credit. Prior to

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that, the unamended Section 41, now substituted, provided that the supplier can take only eligible input tax as self-assessed in his return, and that amount would be credited on a provisional basis to the electronic credit ledger and W.P(C) Nos. 31559/2019, 25891/2020, 26515/2021,5995/2022, 21545/2022, 27854/2022, 24327/2022, 36612/2022, 24677/2023, 37039/2023 can be utilized for payment of self-assessed output tax. The manner of crediting was also provided under Section 49(2).”

62. The scheme of ITC under the GST framework does not envisage a situation where the purchasing dealer is left remediless. The Revenue is empowered to initiate recovery proceedings against the supplier under Sections 73 and 74 of the CGST Act for failure to discharge tax liability in respect of the original transaction. Further, in terms of Rule 37A of the CGST Rules, 2017 once the supplier discharges such tax liability, the purchasing dealer becomes entitled to re-avail the credit in the immediately succeeding month. Thus, the statutory mechanism does not permanently deprive the purchasing dealer of ITC; rather, the credit is restored upon payment of tax into the Government treasury. Mere delay or hardship in availing ITC, therefore, cannot constitute a valid ground for reading down Section 16(2)(c) of the CGST Act.

63. Section 41(2) of the CGST Act adequately addresses the concerns of the purchasing dealer. The provision, in its plain terms, balances the interests of revenue with those of the recipient by permitting re-availment of credit upon payment by the supplier. The contention regarding double taxation is misconceived. It is well settled that ITC is not a constitutional or vested right, but a statutory concession, subject to the conditions and restrictions prescribed under the Act. Where the statute provides for reversal and re-availment of credit, the

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same cannot be characterised as double taxation so as to invalidate the provision.

64. Even in a situation where the supplier fails to remit the tax collected from the purchasing dealer, the latter is not without recourse. The purchasing dealer may pursue appropriate remedies against the supplier, while the Government retains the authority to recover the unpaid tax from the defaulting supplier. The mere absence of a specific statutory mechanism enabling recovery by the purchasing dealer from the supplier cannot, by itself, render Section 16(2)(c) of the CGST Act ultra vires.

65. The entitlement to input tax credit operates on the statutory assumption that the tax collected by the supplier has been duly remitted to the Government. Credit is reflected in the Electronic Credit Ledger maintained by the State only upon such payment. Consequently, unless the tax collected by the supplier is deposited with the Government, the purchasing dealer cannot claim ITC as a matter of right. In such circumstances, the principle of double taxation is not attracted.

66. In any event, where the Department subsequently recovers the tax from the supplier, the purchasing dealer who has borne the tax incidence may seek appropriate relief in accordance with law. At this stage, it is apposite to consider the doctrine of reading down.

67. Thus, where a Court, upon a plain and literal interpretation of a statutory provision, finds that it gives rise to constitutional or legal infirmities, it may resort to the doctrine

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of reading down. However, in the present case, Section 16(2)(c) of the CGST Act is clear, self-explanatory, and unambiguous. Its plain reading does not give rise to any constitutional or legal infirmity. The underlying intent of the provision is that the Government cannot be deprived of revenue on account of illegal or defaulting conduct on the part of the supplier.

68. On a close scrutiny of the scheme of the GST regime, it is evident that Section 16(2)(c) of the CGST Act cannot be equated with the VAT regime, particularly with Section 9(2)(g) of the DVAT Act, as examined by the Delhi High Court in ***On Quest Merchandising India (P) Ltd. (supra***). It is also noticed that the Tripura High Court, while following in the case of ***On Quest Merchandising India (P) Ltd. (supra)***, has read down Section 16(2)(c) of the CGST Act on the ground of practical impossibility for the purchaser to ensure that the supplier has deposited tax. With respect, we are unable to agree with the said view. The Tripura High Court proceeded on the premise that ITC is intended solely to avoid double taxation under the CGST regime, but did not adequately consider the interplay of Sections 41 and 53 of the CGST Act read with Rule 37A of the CGST Rules, 2017.

69. It may also be noted that neither the Delhi High Court in the case of ***On Quest Merchandising India (P) Ltd. (supra)*** nor the Tripura High Court has examined the effect of Section 155 of the CGST Act, which reads as under:

> *"Section 155 – Burden of proof: Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."*

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70. Thus, the purchasing dealer must discharge the initial burden of establishing eligibility to claim input tax credit. Such eligibility is intrinsically linked to the fulfilment of statutory conditions, including the deposit of tax by the supplier with the Government. The expression “eligible” in Section 155 of the CGST Act cannot be construed as dependent upon a unilateral act of claim by the purchaser; rather, it has a direct nexus with the actual payment of tax by the supplier.

71. The non-deposit of tax and claim of ITC by both the supplier and purchaser has a cascading effect on the purchaser who becomes a subsequent supplier and he in turn further supplies the goods. Thus, unless the seller deposits the eligible tax on supply of goods, the subsequent purchaser while further supplying the goods can only apply the credit in case the supplier has deposited the amount so collected in the government. The private transaction between supplier and the purchaser cannot be taken into account by the revenue unless there is a payment of tax in revenue arising from such transaction.

72. Both the supplier and the purchaser are integral to the tax chain and must discharge their respective obligations to ensure the integrity of the GST framework. The scheme of the Act contemplates that a *bona fide* purchaser must exercise due diligence and, upon becoming aware of non-compliance by the supplier, refrain from further transactions that would perpetuate the credit chain.

73. Section 16(1) of the CGST Act deals with the eligibility of a dealer to avail ITC and clause (a), (b), (c) & (d) of Section

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16(2) of the GST Act deal with the conditions for enabling such benefits. Clause (a), (b), (c) & (d) of Section 16(2) of the CGST Act should be read and satisfied together and not separately to avail the benefit of ITC. Clause (c) of Section 16(2) of the CGST Act clearly states that ITC will be available to the purchasing dealer only if the supplier has paid the tax to the Government. It is for the purchasing dealer to prove that the tax collected has been remitted to the Government by the supplier.

FRAMEWORK OF SECTION 16(2)(C), Section 41(2) & RULE 37(A) :-

74. Section 16(2)(c) mandates that the recipient ensure tax is paid to the government, yet it does not explicitly stipulate that payment must occur via Form GSTR-3B. FORM GSTR-3B is a self-declared summary return used to report and pay taxes. While it acts as the official record of the taxpayer's tax liability and payment, it does not automatically prove that a supplier has paid tax to the government as required by Section 16(2)(c). Instead, the recipient must verify this via GSTR-2B and temporarily reverse ITC in GSTR-3B Table 4(B)(2) if the supplier has not paid it. Effective October 1, 2022, Section 41(2) specifically requires the recipient to reverse Input Tax Credit (ITC), plus applicable interest, if the supplier fails to deposit the tax. However, the proviso also establishes a mechanism for re-availing this credit once the tax is eventually paid.

75. The operational procedure for this reversal and re-availing was introduced via Rule 37A on December 26, 2022. This rule offers a grace period, allowing recipients to retain ITC even if the supplier has not paid the tax by September 30 of

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the following financial year. Recipients are granted until November 30 to reverse the ITC; interest liabilities only accrue if the reversal is missed beyond this November deadline. While Section 16(2)(c) must be strictly observed to protect government revenue, the provisions of Section 41 and Rule 37A acknowledges that recipients should not be unfairly penalized for a supplier's default. Section 41 of the CGST Act, 2017 has been fully substituted through Finance Act, 2022. Section 41(2) of the CGST Act, 2017 provides that the recipient of credit must reverse ITC claims if the supplier has not deposited taxes. Further, proviso to section 41(2) of the CGST Act, 2017 allows the buyer to re-avail or re-claim such reversed ITC later when the suppler pays tax. Thus, the legal frame work of the provisions of Section 16(2)(c) read with Section 41(2) read with Rule 37A maintains the interest of revenue and the purchaser.

76. The petitioners have heavily placed reliance on the maxim *Lex Non Cogit Ad Impossibilia*, which means that the law does not compel a man to do that which he cannot possibly perform, is closely connected to the maxim *Impotentia Excusat Legem***,** which means a disability that makes it impossible to obey the law can be excused. However, the scheme of the GST regime does not strictly attract the intent of the maxim. As previously held by us, the provisions of Section 41 of the CGST Act read with Rule 37A of the CGST Rules, 2017 recognizes that purchaser are not unfairly penalized for a supplier's default. It is true that the puchasers cannot compel the supplier to deposit tax with the government, thereby seek

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strict compliance of the provisions of Section 16(2)(c) of the CGST Act, but simultaneously they can avoid the circumstances by due care and caution. The GST regime operates on the contract/agreement between two parties. While entering into an agreement, a purchaser can ensure there is a clause that takes care of the lacuna and holds the supplier liable to indemnify the purchaser if the said purchasing dealer suffers a loss due to a default by the supplier to remit to the government the tax collected from the purchaser. Such clauses can be made part of the agreements covering such situations.

77. The following conditions must be satisfied for Rule 37A of CGST Rules, 2017 to apply- i) The recipient has claimed ITC on such invoice based on the record shown in GSTR-2B. ii) The supplier has not deposited the tax on such invoice/debit note. iii) The supplier has not filed the GSTR-3B with the corresponding invoice/debit note. Pertinently, the filing of GSTR-3B does not inherently guarantee that the tax has been paid in full. The provisions of Section 16(2)(c) of the CGST Act 2017 are invoked when the corresponding payment of Tax has not been fulfilled by the supplier. Likewise proviso to Section 41(2) mentions that the purchaser can reclaim the reversed ITC later on when the supplier pay the tax.

78. Now, the proposition advanced by the petitioners that the provisions of Section 16 of the CGST Act and the clauses mentioned therein are to be read independently is misconceived. It was contended before us that the Revenue must stop at the stage of clause (b) of sub-section (2) of

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Section 16 of the CGST Act and, once that exercise is complete, cannot proceed to clause (c). We do not subscribe to the submissions advanced by the petitioners.

79. ITC falls under Chapter V and Section 16 of the CGST Act deals with the eligibility and conditions for availing such credit. The provision itself contains the necessary checks and balances for claiming input tax credit. The first and foremost condition is that a dealer (registered person) must be in possession of a tax invoice or debit note issued by a supplier registered under the Act. The second condition, as stipulated in clause (b), is that the registered person must have received the goods or services or both. This clause further incorporates twin conditions under sub-clauses (i) and (ii), which mandate that the goods are delivered by the supplier to the recipient or to any other person on the direction of the registered person, and that services are provided by the supplier to any person on account of such registered person. Clause (c) further stipulates compliance with the requirement of actual payment of the tax charged to the Government.

80. Thus, the Revenue cannot be directed to stop at clause (b), since eligibility for input tax credit is established only after the receipt of goods or services or both, and upon the tax charged in respect of such supply being duly paid to the Government. A registered person (dealer) cannot be held entitled to claim input tax credit unless all the conditions up to clause (c) are satisfied. As per the provisions of Section 155 of the CGST Act, the burden lies upon the dealer to establish entitlement up to the stage of clause (c), and such benefit

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cannot be availed by merely satisfying the requirement under clause (b). Hence, the clauses under sub-section (2), from (a) to (d), are to be read conjointly and not independently of each other.

DOCTRINE OF READING DOWN :

81. The Supreme Court, in the case of ***Authorized Officer, Central Bank of India (supra)***, has authoritatively laid down the principles governing the doctrine of reading down. The relevant observations are as under:

> *"94. The principle of "reading down" a provision refers to a legal interpretation approach where a court, while examining the validity of a statute, attempts to give a narrowed or restricted meaning to a particular provision in order to uphold its constitutionality. This principle is rooted in the idea that courts should make every effort to preserve the validity of legislation and should only declare a law invalid as a last resort.*
>
> *95. When a court encounters a provision that, if interpreted according to its plain and literal meaning, might lead to constitutional or legal issues, the court may opt to read down the provision. Reading down involves construing the language of the provision in a manner that limits its scope or application, making it consistent with constitutional or legal principles.*
>
> *96. The rationale behind the principle of reading down is to avoid striking down an entire legislation. Courts generally prefer to preserve the intent of the legislature and the overall validity of a law by adopting an interpretation that addresses the specific constitutional concerns without invalidating the entire statute.*
>
> *97. It is a judicial tool used to salvage the constitutionality of a statute by giving a provision a narrowed or limited interpretation, thereby mitigating potential conflicts with constitutional or legal principles.*
>
> *98. In B.R. Enterprises v. State of U.P. & Ors. reported in (1999) 9 SCC 700, this Court observed that the principles such as "Reading Down" emerge from the concern of the courts towards salvaging a legislation to ensure that its intended objectives are achieved. The relevant observations read as under: -*

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> *"81. ... It is also well settled that first attempt should be made by the courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, maybe beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. 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. ..." (Emphasis supplied)*
>
> *100. Thus, the principle of 'Reading Down" a provision emanates from a very well settled canon of law, that is, the courts while examining the validity of a particular statute should always endeavour towards upholding its validity, and striking down a legislation should always be the last resort. "Reading Down" a provision is one of the many methods, the court may turn to when it finds that a particular provision if for its plain meaning cannot be saved from invalidation and so by restricting or reading it down, the court makes it workable so as to salvage and save the provision from invalidation. Rule of "Reading Down" is only for the limited purpose of making a provision workable and its objective achievable.*

82. Thus, doctrine of reading down is a judicial tool used to salvage the constitutionality of a statute by giving a provision

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a narrowed or limited interpretation, thereby mitigating potential conflicts with constitutional or legal principles. We do not find that the provision of Section 16(2)(c) if read with the scheme of GST regime as discussed, conflicts with constitutional or legal principles. The provision of Section 16(2)(c) cannot be read in isolation, but has to read with attendant provisions as discussed hereinabove, which enables the government to secure its interest in revenue, by keeping a check on fraudulent transactions while maintaining the interest of genuine purchasers. It is settled legal principle of statutory interpretation that a provision in the statute is not to be read in isolation rather it has to read along with other related provisions itself, more particularly when the subject matter interconnects within different sections or parts of the same statute.

STATUTORY INTERPRETATION AND CONSTITUTIONAL RIGHTS :

83. In the case of Commissioner of Sales Tax, Uttar Pradesh vs. Modi Sugar Mills Limited, AIR 1961 SC 1047, the Constitution Bench of the Supreme Court has observed as under:

> "*.....In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.....*"

84. This proposition in context of ITC was reiterated in the decision rendered in the case of Kailash Chandra vs. Mukundi

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Lal, [2002] 2 SCC 678. In paragraph No.11, following has been laid down :

> "*11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature.*"

85. The Supreme Court in the case of ALD Automotive Private Limited vs. Commercial Tax Officer Now upgraded as Assistatnt Commissioner (CT) and Ors., (2019) 13 SC 225, while examining the provisions of VAT, has clarified the nature of ITC as under:

> *"34.The input credit is in nature of benefit/ concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute. .....*
>
> *35. A Three-Judge Bench in India Agencies v. Addl.CIT 2006 taxmann.com 1841 (SC) had occasion to consider Rule 6(b)(ii) of Central Sales Tax (Karnataka) Rules, 1957, which requires furnishing original Form-C to claim concessional rate of tax under Section 8(1). This Court held that the requirement under the Rule is mandatory and without producing the specified documents, dealers cannot claim the benefits.....*
>
> *36. This court had occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka v. M.K. Agro Tech.(P) Ltd. [2017] 86 taxmann.com 123/64 GST 19 (SC). This Court held that it is a settled proposition of law that taxing statute are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances.....*
>
> *37. The judgment on which learned Advocate General of Tamil Nadu had placed much reliance i.e. Jayam and Co. (supra) is the judgment which is relevant for present case. In the above case, this Court had occasion to interpret provisions of Tamil Nadu Value Added Tax Act, 2016, Section 19(20), Section 3(2) and Section 3(3). Validity of Section 19(20) was under challenge in the said case. This Court after noticing the scheme under Section 19 noticed following*

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aspects in paragraph 11: —

"*11. From the aforesaid scheme of Section 19 following significant aspects emerge:*

(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.*"

38. This Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. In paragraph 12, following has been laid down: —

> "*12. It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.*"

86. The following propositions can be culled out from the aforenoted observations.

a) In interpreting a taxing statute, equitable considerations are entirely out of place.

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b) The Court must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions into the statute so as to supply any assumed deficiency.

c) A provision in the statute is not to be read in isolation; rather, it has to be read along with other related provisions itself, more particularly when the subject matter inter-relates with different Sections or parts of the same statute.

d) A taxing statute is to be interpreted literally, and further, it is in the domain of the legislature as to how much tax credit is to be given under what circumstances.

e) ITC is a form of concession extended to a dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute.

f) Whenever a concession is given by statute or notification, etc., the conditions thereof are to be strictly complied with in order to avail such concession.

FINAL OBSERVATIONS :

87. It is not the case of the Government/department that it is destitute or is vulnerable to the inaction of the seller who has not paid the tax. The Act provides the authorities with enough power to proceed against the selling dealer for recovery of tax. Sections 73 and 74 of the GST Act also empower the department to proceed against the defaulting parties in case of non-payment, short payment, and wrongful utilization of credit. A balanced approach is needed, which finds place in the decision expressed by the European Court of Justice ('ECJ') in the case of ***Axel Kittel & Recolta Recycling SPRL (supra)***. Under this principle, the availment of ITC can be denied only if

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it is shown that the recipient knew or ought to have known that their purchase was connected with a fraudulent evasion of tax.

88. *Albeit*, we acknowledge that the provisions of Section 16(2)(c) of the Act are to be viewed from a regulatory standpoint and are anchored in the legitimate objective of maintaining the integrity of the tax chain, preventing systemic revenue loss to the Government; however, it is high time that, in order to resolve the conundrum, the Government undertakes a comprehensive re-evaluation of the dicey situation which purchasers are facing. There is a pressing need for legislative amendments or clarifications to be issued within the GST framework to alleviate the disproportionate financial and administrative burdens currently placed upon purchasers who have an honest claim of ITC. Beyond mere policy changes, the Government should implement a robust, technology-driven tracking mechanism enabling verification of payments made by suppliers against specific invoices in real time, thereby insulating bona fide recipients from the defaults of their vendors. Simultaneously, the Government has to take prompt and immediate steps for recovery of tax from the erring suppliers, instead of compelling the purchasers to avail themselves of alternate cumbersome remedies. In the absence of stringent oversight, unscrupulous sellers could potentially enrich themselves at the expense of both the public exchequer and honest buyers.

89. Since we are not inclined to read down Section 16(2)(c) of the CGST Act, the question of declaring it ultra vires Part III of the Constitution of India, including Article 14 of the

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Constitution of India, does not arise. However, we expect the Government to address the issue of genuine purchasers at the earliest.

90. The Registry shall now list the captioned writ petitions to be decided on merits. The rest of the contentions and rights of the respective parties are left open.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

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