

Sahil Enterprises vs. Union of India & Ors.

Eligibility of Input Tax Credit where supplier fails to deposit tax - Reading down of Section 16(2)(c) of the CGST Act, 2017 - Demand under Section 73 of the CGST Act, 2017.

Date of Order: January 6, 2026
Case Law No: GIB-TRIHC-2026-15
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Facts:

The petitioner purchased rubber products from a supplier and paid GST amounting to ₹1,11,60,830 to the supplier during July 2017 to January 2019. Investigation revealed that the supplier filed GSTR-1 showing sales but did not deposit the GST with the Government while filing GSTR-3B returns. The department issued a show cause notice under [Section 73](#) alleging wrongful availment of ITC and confirmed the demand along with interest and penalty.

Court Decision:

The High Court held that [Section 16\(2\)\(c\)](#) of the CGST Act requires that ITC can be availed only when tax charged on the supply has actually been paid to the Government. However, the Court observed that a purchasing dealer has no mechanism to verify whether the supplier has deposited the tax with the Government and cannot control the supplier's compliance.

The Court held that denial of ITC to a bona fide purchaser who has paid tax to the supplier would impose an impossible and disproportionate burden and would defeat the objective of ITC, which is to avoid double taxation. Accordingly, the Court held that [Section 16\(2\)\(c\)](#) is constitutionally valid but must be read down so that ITC cannot be denied in bona fide transactions where the purchaser has paid GST to the supplier and there is no fraud or collusion.

Since the proceedings against the petitioner were initiated under [Section 73](#) and there was no allegation of fraud or collusion, the transaction was held to be bona fide. The impugned order dated 17.05.2022 denying ITC was set aside and the respondents were directed to allow ITC of ₹1,11,60,830 to the petitioner.

Cases Referred by Court:

- *B.R. Enterprises vs. State of U.P.*
- *CST vs. Radhakrishan*
- *On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi*
- *Commissioner of Trade and Tax, Delhi vs. Arise India Ltd.*
- *Shanti Kiran India (P) Ltd. vs. Commissioner Trade and Tax, Delhi*
- *Commissioner of Trade and Tax, Delhi vs. Shanti Kiran India (P) Ltd.*
- *National Plasto Moulding vs. State of Assam*
- *McLeod Russel India Ltd. vs. Union of India*
- *Laxmipat Singhania vs. CIT*
- *Mahaveer Kumar Jain vs. CIT*
- *Jain Brothers vs. Union of India*

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