Instakart Services Private Limited v. Union of India & Ors.

Validity of Section 16(2)(c) of the CGST/KGST Act and Rule 36(4) of the CGST/KGST Rules, and whether they should be read down so that bona fide recipients get ITC despite supplier default.

Date of Order: February 9, 2026
Case Law No: GIB- KHC-2026-28
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Instakart provides logistics, packaging, delivery and warehousing services to sellers on the Flipkart marketplace and is registered in several States. In 2021 it challenged Section 16(2)(c) and Rule 36(4) as violating Articles 14, 19(1)(g), 265 and 300A. It contended that these provisions cast an impossible burden on recipients to ensure that suppliers pay tax and file returns, which is beyond their control. In the alternative, it sought a reading down so that a recipient who satisfies all other conditions of Section 16(2) is not denied ITC for the supplier's lapse. It relied on On Quest, Arise India, Shanti Kiran India and National Plasto Moulding (Gauhati High Court). The Revenue opposed the petition.

Final Verdict

The Single Judge framed the question as whether the provisions are unconstitutional or should be read down in favour of bona fide recipients. He referred to the Karnataka High Court's VAT-era rulings (Rajesh Jain, Jain Steels) that a purchaser who proves payment of tax to the seller cannot be deprived of credit, the Revenue's remedy being against the seller. He also extracted extensively from the Tripura High Court's judgment in Sahil Enterprises and expressed respectful agreement with it. The petition was disposed of in terms of National Plasto Moulding and Sahil Enterprises, and the Court directed that **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 have complied with all other conditions of Section 16(2), despite any fault, lapse or non-payment of tax by the suppliers. No specific demand order was under challenge, so the relief operates as a declaration on the provisions.

Note: gstindia.biz shows the Case Law No. as "GIB- KERHC-2026-28". The court is the Karnataka High Court, so the "KERHC" code may be a site labelling error. Subsequent development (interpretation): this order predates the Supreme Court's dismissal in Bhandari Scrap Traders (24.07.2026), which affirmed the Gujarat High Court's refusal to read down Section 16(2)(c).

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