Sahil Enterprises v. Union of India & Ors.

Constitutional validity of Section 16(2)(c) of the CGST Act, and denial of ITC to a bona fide purchaser where the supplier collected GST but did not deposit it with the Government.

Date of Order: January 6, 2026
Case Law No: GIB- TRIHC-2026-29
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioner, a trader in rubber products, bought goods from M/s Sentu Dey between July 2017 and January 2019 and paid GST of ₹1,11,60,830 to the supplier. The supplier reported these sales in GSTR-1 but filed "Nil" GSTR-3B returns and did not deposit the tax. The department blocked the petitioner's electronic credit ledger and issued an SCN under Section 73 on 07.01.2021. By order dated 17.05.2022 it confirmed the reversal of ₹1,11,60,830 with interest and penalty. The petitioner challenged that order and the vires of Section 16(2)(c) under Articles 14, 19(1)(g), 265 and 300A, contending that a purchaser has no mechanism to verify whether the supplier has paid the tax.

Final Verdict

The Division Bench held that Section 16(2)(c) is not unconstitutional, but read it down. It adopted the reasoning of the Delhi High Court in On Quest Merchandising (under Section 9(2)(g) of the DVAT Act), which the Supreme Court approved in Arise India and Shanti Kiran India. The Court reasoned that a purchaser cannot practically ensure that the seller deposits the tax, and that ITC exists to avoid double taxation. Nothing in the Act expressly permits taxing a purchaser twice by denying credit in all situations. The High Courts that upheld the provision without reading it down had not considered these Supreme Court-approved decisions or the practical impossibility involved. The Court held that **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.** As the department had invoked only Section 73 (not fraud under Section 74) and did not dispute that the GST had been paid to the supplier, the transaction was held to be bona fide. The order was set aside and the department was directed to allow ITC of ₹1,11,60,830 forthwith.

Subsequent development (interpretation): in Bhandari Scrap Traders (24.07.2026) the Supreme Court recorded that an SLP has been entertained against this judgment. It observed that the Tripura High Court had not undertaken the comparative DVAT/CGST analysis done by the Gujarat High Court, and upheld the Gujarat view that Section 16(2)(c) should not be read down. The precedential weight of this judgment should be assessed with that in mind.

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