McLeod Russel India Limited v. Union of India & Ors.

ITC eligibility under Section 16(2)(aa) of CGST/AGST Acts, 2017 where the supplier fails to report invoice details in GSTR-1.

Date of Order: December 9, 2025
Case Law No: GIB-GHC-2025-66
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioner challenged Section 16(2)(aa), contending that the provision places an arbitrary and impossible burden upon a bona fide purchaser. The purchaser has no control over whether the supplier correctly furnishes invoice details in GSTR-1, while non-reflection of such details in GSTR-2A/GSTR-2B may result in denial of ITC. It was contended that the purchaser may have already paid the GST component to the supplier and should not suffer because of the supplier's default.

It was further contended that denial of ITC would effectively result in the purchaser bearing the tax twice and would run contrary to the GST framework of taxing value addition and avoiding cascading of taxes. Reliance was placed upon CBIC Circulars which had provided an arrangement for allowing ITC where invoice details were not uploaded or correctly reported by suppliers, as well as judicial decisions where relief had been granted to bona fide purchasers.

Court Observation

The Court noted that ITC is subject to the eligibility conditions prescribed under Section 16(1) and (2). Ordinarily, the conditions include possession of the prescribed tax document, receipt of goods or services, actual payment of tax charged to the Government by the supplier, and furnishing of the return under Section 39. The Court also noted that Section 16(2)(aa) directly links the recipient's entitlement to ITC with the supplier's compliance with its GST filing obligations.

The Court held that although the condition under Section 16(2)(aa) places an onerous burden on the purchasing dealer, the object of the amendment is to prevent fraudulent ITC claims and promote supplier compliance. Therefore, the Court declined to declare the provision unconstitutional. However, it found the restriction inequitable where a bona fide purchaser is denied ITC merely because of the supplier’s default.

Accordingly, the Court **read down** **Section 16(2)(aa)** to the extent that, where the supplier is in default, ITC should not be denied to a bona fide purchaser without first giving the purchaser an opportunity to establish its bona fides. Such bona fides may be verified through tax invoices and other relevant documents. The Court stated that this reading down would operate until CBIC provides a practical solution to the issue.

Final Verdict

The Gauhati High Court **did not declare** **Section 16(2)(aa)** **unconstitutional**. Instead, it **read down the provision** so that a bona fide purchaser is given an opportunity to prove its bona fides through tax invoices and other documents before ITC is denied on account of the supplier’s default.

The writ petition was accordingly **disposed of** on the above terms.