Bhandari Scrap Traders v. Union of India & Ors.

Validity of Section 16(2)(c) CGST Act on ITC where supplier fails to pay tax.

Date of Order: July 24, 2026
Case Law No: GIB-SC-2026-105
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CASE DESCRIPTION / SUMMARY

Background

The matter arose from the judgment of the Gujarat High Court in SCA No. 749/2025, which considered the constitutional validity of Section 16(2)(c) of the CGST Act in the context of ITC where the supplier fails to pay the requisite tax. The High Court undertook a detailed analysis of the differences between the **Delhi Value Added Tax Act, 2004** and the **CGST Act, 2017**, including the scheme governing availment of ITC under GST.

The High Court also considered **Section 41 and Sections 73 and 74 of the CGST Act**, observing that under the GST regime, reversed ITC could be re-availed after the supplier-dealer discharges the tax liability. The Gujarat High Court consequently found no ground to declare Section 16(2)(c) unconstitutional or to read down its provisions.

Court Observation

The Supreme Court noted that although a special leave petition had been entertained in relation to the Tripura High Court's decision in **Sahil Enterprises v. Union of India & Ors.**, the exercise undertaken by the Gujarat High Court was materially different. The Supreme Court specifically accepted the Gujarat High Court's detailed distinction between the Delhi VAT Act and the CGST Act and held that **there was no possibility of drawing parity between the two enactments** for treating a purchasing dealer under the CGST Act on the same footing as a bona fide purchasing dealer under the Delhi VAT Act when the supplier fails to pay tax.

The Court further agreed with the Gujarat High Court's consideration of Sections 41, 73 and 74 of the CGST Act regarding re-availment of reversed ITC upon discharge of the supplier's tax liability.

Final Verdict

The Supreme Court held that the Gujarat High Court was **fully justified** in concluding that no grounds existed to declare **Section 16(2)(c) of the CGST Act unconstitutional or to read down**

the provision. The Supreme Court expressed its complete and respectful agreement with the Gujarat High Court's view and **affirmed and upheld the impugned judgment**.

Accordingly, the **Special Leave Petitions were dismissed**, and any pending applications were also disposed of.

Case Referred by Court

Sahil Enterprises v. Union of India & Ors. — **Tripura High Court**, decision referred to as **(2026) 154 GSTR 108 (Tri.)**. The Supreme Court considered the distinction between the Tripura High Court decision and the Gujarat High Court's analysis in the present matter.