

From Bona Fide to Compliant: How Maruti and Bhandari

Redefine the Test Under Section 16(2)(c)

Introduction

Every few years, a provision comes along that the Department wields like a hammer and the trade fears like a trapdoor. Section 16(2)(c) of the CGST Act has been that provision since 2017, the clause that makes a buyer's input tax credit hostage to a seller's conduct the buyer cannot control, cannot see, and cannot compel. For years, the trade's fear was that the courts would leave this exactly as onerous as it reads on paper: pay your supplier, hope he pays the government, and if he doesn't, lose your credit regardless of your own conduct. The Gujarat High Court's judgment in *Maruti Enterprise vs. Union of India*, affirmed by the Hon'ble Supreme Court's dismissal of the connected SLP in *Bhandari Scrap Traders vs. Union of India & Ors.* — has now closed that chapter, but not in the way most commentary is reading it. Both fora upheld the constitutional validity of Section 16(2)(c); the condition that tax must be paid by the supplier for the recipient to claim ITC is good law. But that is only half of what was decided. This article makes a direct claim, and defends it paragraph by paragraph from the judgment itself: **the same judgment that upholds Section 16(2)(c) also tells the recipient exactly how that condition is satisfied, and once GSTR-2B reflects the invoice and GSTR-3B has been filed by the supplier, compliance is complete.**

The Supreme Court's Refusal to Equate DVAT with GST — and Why

Bhandari's own writ petition, SCA No. 749/2025, was one of the batch of matters tagged with and disposed of through the Maruti common judgment dated 01-05-2026 (lead matter: R/Special Civil Application No. 18080 of 2023). The petitioners had leaned on *On Quest Merchandising India (P) Ltd. vs. Government of NCT of Delhi* the Delhi High Court's DVAT-era ruling, subsequently affirmed by the Supreme Court itself in *Commissioner of Trade & Tax, Delhi vs. Arise India Ltd.* and again approved in *Commissioner Trade & Tax, Delhi vs. Shanti Kiran India (P) Ltd.*, all of which had read down a similarly worded DVAT provision on the ground that a purchasing dealer could never verify whether his seller had deposited tax. This line of authority mattered because it did not merely rest on a High Court view; it carried the Supreme Court's own imprimatur, twice over. If it had been transplanted into the GST framework, Section 16(2)(c) would have gone the same way. The Supreme Court, in the Bhandari order, declined to do so, holding:

"The distinction and differences between the provisions of the Delhi Value Added Tax Act, 2004, and the Central Goods and Services Tax Act, 2017, brought out by way of a detailed analysis from paragraph 42 onwards in the impugned judgment along with the scheme of availing Input Tax Credit (ITC) under the GST regime, as set out in paragraph 56 of the impugned judgment, clearly demonstrate that there is no possibility of drawing parity between the provisions of the two enactments..."

This is the entire ratio of the dismissal. And the reason the SC-affirmed DVAT line failed to transplant is instructive: the Gujarat High Court's judgment does not merely note, as a matter of legislative bookkeeping, that Sections 41 and 53 exist in the CGST Act and had no counterpart under DVAT. It goes further; it actually works out, step by step, *how* Section 41 and Rule 37A operationalise Section 16(2)(c), thereby supplying precisely the verification mechanism whose *absence* was fatal to Section 9(2)(g) of the DVAT Act in *On Quest*, *Arise India*, and *Shanti Kiran*. It is this worked-out mechanism, not merely the fact of these provisions' existence, that the Supreme Court endorsed, and that is why even a twice-affirmed Supreme Court line under DVAT could not be carried over into GST.

Para 56: The Chain That Changes Everything

Para 56 is the technical heart of the judgment. It sets out, form by form, exactly how ITC flows under GST and it is this documented, sequential, recipient-visible chain that the DVAT regime never had:

"1. Invoice — The Supplier Dealer issues Tax Invoice for the supply of goods. [Section 31 r/w. Rule 46]" "2. GSTR-1 — The said Supplier Dealer files return in prescribed form, disclosing the outward supplies effected by him, including the amount of tax included therein. [Section 37 r/w. Rule 59(1)]" "3. GSTR-2A — The details of outward supplies furnished by supplier dealer in its GSTR-1 get auto-populated to the Purchasing Dealer. [Section 38 r/w. Rule 60(1)]" "4. GSTR-2B — Auto generated statement gets available to the Purchasing Dealer, containing the details of Input Tax Credit, solely on the basis of the details furnished by Supplier Dealer in its GSTR-1. [Section 38 r/w. Rule 60(7)]" "5. GSTR-3B — The said Supplier Dealer has to file return in prescribed form, paying the tax on the outward supplies. [Section 39 r/w. Rule 59(1)]" "6. GSTR-3B — The said Purchasing Dealer also files return in the prescribed form, for discharging his duty liability on his outward supplies... on the basis of the auto-generated statement in Form GSTR-2B..."

Serial No. 5 is decisive: the supplier's GSTR-3B is, in the Court's own words, the return in which the supplier is *"paying the tax on the outward supplies."* GSTR-3B filing by the supplier is not a bureaucratic formality sitting next to the payment of tax — in this judgment's own architecture, it **is** the act of paying the tax.

Para 58: Section 41 Is Not Bolted On — It Is Part of the Entitlement Itself

At Para 58, the Court makes a structural point:

"At this stage, it is appropriate to refer to the provisions of Section 41, read in conjunction with Section 16(1) of the CGST Act. These provisions clarify that a purchasing dealer is entitled to avail of ITC, which is credited to their Electronic Credit Ledger maintained under Rule 86 of the CGST Rules, 2017 in Form GST PMT-02. Consequently, a purchasing dealer is entitled to credit for the tax charged on the supply of goods or services (the initial transaction) provided those goods or services are used, or intended to be used, in the course or furtherance of their business in subsequent transactions."

Section 41 of the CGST Act, as substituted by the Finance Act, 2022, reads:

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"41. Claim of input tax credit and provisional acceptance thereof (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger. (2) The credit of input tax availed by a registered person under sub-section (1) shall be eligible to be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section: Provided that where the credit of input tax availed by a registered person under sub-section (1) has been utilised for payment of self-assessed output tax as per the details furnished under sub-section (2) of section 39 in respect of any tax period and where such supplier has not paid the tax on such outward supply, the input tax credit availed in respect of such supply shall be reversed, along with applicable interest, in such manner as may be prescribed. Provided further that where the said amount of tax is paid by the said supplier, the registered person referred to in sub-section (1) above may re-avail the amount of credit reversed by him."

Section 16(2)(c) uses the language of "payment." Section 41 uses the language of "return" and "filing." The Court has fused the two — Section 41, read with Section 16(1), is the mechanism through which "payment" under clause (c) is given legal content.

Para 68: The Sentence That Decides the Case

At Para 68, the Gujarat High Court explains why it distinguished *On Quest Merchandising*, and by extension *Arise India* and *Shanti Kiran*, and declined to follow the Tripura High Court's decision in *Sahil Enterprises*, which had read down Section 16(2)(c) by following the *On Quest* line of authority:

"On a close scrutiny of the scheme of the GST regime, it is evident that Section 16(2)(c) of the CGST Act cannot be equated with the VAT regime, particularly with Section 9(2)(g) of the DVAT Act, as examined by the Delhi High Court in On Quest Merchandising India (P) Ltd. (supra). It is also noticed that the Tripura High Court, while following in the case of On Quest Merchandising India (P) Ltd. (supra), has read down Section 16(2)(c) of the CGST Act on the ground of practical impossibility for the purchaser to ensure that the supplier has deposited tax. With respect, we are unable to agree with the said view. The Tripura High Court proceeded on the premise that ITC is intended solely to avoid double taxation under the CGST regime, but did not adequately consider the interplay of Sections 41 and 53 of the CGST Act read with Rule 37A of the CGST Rules, 2017."

In our humble opinion, this passage cannot be reduced to a bare structural observation that Sections 41 and 53 merely "exist" in CGST while their counterpart is absent in DVAT. The Court goes further — at Paras 61, 74, 75 and 77 — to actually work out *how* that interplay functions and what it demands of the recipient. Section 16(2)(c), in other words, is not upheld as a standalone provision; it is upheld **as read with** Section 41 and Rule 37A, and the Court's validation of clause (c) and its exposition of the Section 41/Rule 37A mechanism are two halves of a single, conjoint holding.

Para 74: Two Holdings, Read Together

This is where that conjoint reading crystallises. At Para 74, the Court states:

"Section 16(2)(c) mandates that the recipient ensure tax is paid to the government, yet it does not explicitly stipulate that payment must occur via Form GSTR-3B. FORM GSTR-3B is a self-declared summary return used to report and pay taxes. While it acts as the official record of the taxpayer's tax liability and payment, it does not automatically prove that a supplier has paid tax to the government as required by Section 16(2)(c). Instead, the recipient must verify this via GSTR-2B and temporarily reverse ITC in GSTR-3B Table 4(B)(2) if the supplier has not paid it. Effective October 1, 2022, Section 41(2) specifically requires the recipient to reverse Input Tax Credit (ITC), plus applicable interest, if the supplier fails to deposit the tax. However, the proviso also establishes a mechanism for re-availing this credit once the tax is eventually paid."

The Court answers a question Section 16(2)(c) itself is silent on — *how is that payment to be validated by the purchaser?* Its answer is GSTR-2B and GSTR-3B, and nothing beyond them.

Our Position

The positive, practical outcome of Maruti and Bhandari is a shift in the entire vocabulary of this debate. For years, the dispute over ITC denial was fought on the axis of "bona fide purchaser" versus "non-bona fide purchaser," a subjective, fact-heavy, litigation-prone inquiry into a recipient's knowledge, intent, and diligence. **That axis, in our view, is now obsolete.** What the Gujarat High Court has done, and what the Supreme Court has endorsed by refusing to disturb it even against a twice-affirmed DVAT precedent, is replace that subjective test with an objective, document-based one: **the axis is no longer bona fide versus non-bona fide it is compliant purchaser versus non-compliant purchaser.**

And compliance, on this judgment's own terms, has a fixed, two-document content: the invoice must be reflected in the recipient's GSTR-2B, and the supplier's GSTR-3B for that period must have been filed. Where both conditions are met, the recipient has done what Section 16(2)(c), Section 41, and Rule 37A collectively require of them. If GSTR-3B has not been filed within the Rule 37A window, the recipient reverses; the moment it is filed and the supplier's liability is discharged, the recipient re-avails, exactly as the proviso to Section 41(2) guarantees.

We say this as our own considered position, and we say it clearly: **Section 16(2)(c) survives as constitutional law, but it survives only in the form the Gujarat High Court gave it a form we read as fully discharged by GSTR-2B reflection and GSTR-3B filing.** A recipient who satisfies both has, in our view, completed the compliance the Maruti judgment and the Bhandari order together prescribe. Whether this reasoning will hold every future Departmental demand at bay is a question the judgment itself leaves open. At Para 88, the Court calls on the Government to undertake its own re-evaluation

and build better verification tools, which tells us this is a developing, not a fully closed, area of law. But as matters stand today, on the text of these two rulings read as one continuous whole, our determination is unambiguous: GSTR-2B and GSTR-3B compliance is the compliance the law asks for, and it should not, on this reasoning, be treated as anything less.



Authored by Ashu Dalmia and places on record his appreciation for the research and drafting assistance provided by Ankita Jha.

Disclaimer: This article reflects our own reading, interpretation, and professional determination of the Maruti Enterprise judgment (Gujarat High Court) and the Bhandari Scrap Traders SLP order (Supreme Court), based on the text of these judgments as available to us. It does not constitute legal advice and should not be relied upon or acted upon as such without independent professional consultation. Readers are advised to verify the current status of these judgments, including any review, curative, or further proceedings, before applying this analysis to any specific fact situation.

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