



2025:KER:99004

WP(C) No.30075 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 8TH DAY OF JUNE 2026 / 18TH JYAISHTA, 1948

WP(C) NO. 30075 OF 2024

PETITIONER/S:

M/S. INTERTEK INDIA PVT. LTD.,
GROUND FLOOR, 38/4010 A, MAMANGALAM, PALARIVOTOM P.O.,
KOCHI, ERNAKULAM, KERALA, RESENTED BY ITS AUTHORISED
SIGNATORY, PIN - 682025

BY ADVS.
SRI. G.SHIVADASS SR. ADVOCATE
SRI.SHAJI THOMAS
SRI.JEN JAISON
SHRI.THOMASKUTTY SEBASTIAN

RESPONDENT/S:

ASSISTANT COMMISSIONER OF CENTRAL TAXES AND CENTRAL
EXCISE,
KAKKANAD DIVISION, GST BHAVAN, KATHRIKADAVU, KALLOR,
ERNAKULAM, COCHIN, KERALA, PIN - 682017

BY ADV SRI.P.T.DINESH, SENIOR CENTRAL GOVT. COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.10.2025, THE COURT ON 8.6.2026 DELIVERED THE FOLLOWING:



JUDGMENT

This writ petition is submitted by the petitioner, a Company registered under the Companies Act, 2013, challenging Ext.P1 order passed under section 74 of the CGST Act, 2017, by which, it was ordered to reverse the input tax credit claimed by the petitioner to the tune of Rs.1,31,14,220/-, by holding that the same was wrongly availed by the petitioner. It was also found in the said order that, the petitioner had distributed the input tax credit among the other branches of the company (distinct persons) without obtaining a registration for Input Service Distributor (ISD), and thereby violated the provisions of the CGST Act.

2. The facts that led to the filing of this writ petition are as follows: The petitioner is a multinational company having global presence and multiple branches all over the world. Since the petitioner is having business places in various States in the country, separate registrations have been taken in respect of all the said units, in the respective States, as per the requirements of the CGST Act. The units of the petitioner are located at Delhi, Haryana, Karnataka, Maharashtra and Tamil Nadu, apart from the petitioner-unit.



3. During the period from July, 2017 to March 2019, M/s Intertech USA Inc., the parent company of the petitioner (hereinafter referred to as foreign company) provided services such as, email, virus protection, IT management and infrastructure services along with other IT support services to the petitioner company and to the other units of the petitioner company across the country. For the aforesaid transactions, the foreign company issued Ext.P4 invoice dated 31.8.2017 in the name of M/s Intertech India Pvt. Ltd, Delhi, which is the corporate office of the company. However, by following the administrative practice of the company, the payment against Ext.P4 invoice was affected by the petitioner unit. Ext.P5 is the tax invoice evidencing the same. Since the invoice is raised in respect of a transaction with a company outside India, Ext.P6 self invoice was raised by the petitioner, as the liability of tax ought to have been discharged following the reverse charge mechanism (hereinafter referred to as RCM). Ext.P6 is the said invoice. The input tax credit against the said transaction was subsequently claimed by the petitioner.

4. Thereafter, as the services provided by the foreign company were availed by all the units of the company across the country, and the expenses incurred by the petitioner for such services pertain to other units as well, the value and credit in respect of the same had to be cross



charged to the respective units. Accordingly, the petitioner raised five invoices on the other units (distinct persons as per section 25(4) of the CGST Act), as evidenced by Ext.P7.

5. On 29.10.2020, the petitioner was issued with form ADT-01 for conducting a GST audit and certain documents were called for from the petitioner. The petitioner furnished all the documents and the explanations, required by the authority concerned. Thereafter, the petitioner was served with Ext.P13 audit enquiry notice where, one of the main discrepancies highlighted was that, the petitioner had wrongly availed and utilized the ITC amounting to Rs. 1,31,14,220/-, and the same is to be reversed. The petitioner submitted Ext.P14 reply to the same opposing the said proposal and ultimately it resulted in Ext.P19 show cause notice. In the show cause notice, apart from the allegation of availing ineligible ITC, it was also alleged that, the distribution of the ITC made by the petitioner to the other units was without obtaining a registration as input service distributor (ISD) and thus the petitioner had violated the provisions of the CGST Act. Even though the petitioner had submitted reply to the same explaining in detail, and highlighting the legality of the steps taken by the petitioner, ultimately Ext.P1 was issued by the respondent rejecting all the contentions of the petitioner and confirming the demand of Rs.1,31,14,220/- towards IGST payable and



also imposing a penalty equal to the same amount. This writ petition is submitted in such circumstances challenging Ext.P1.

6. A detailed counter affidavit is submitted by the respondent controverting the contentions raised in the writ petition, opposing the reliefs sought therein and explaining the circumstances under which Ext.P1 order was passed.

7. I have heard Sri. G. Shivadass, the learned Senior Counsel assisted by Sri Shaji Thomas, appearing for the petitioner and Sri. P.T.Dinesh, the learned Senior panel counsel for the respondents.

8. On going through Ext.P1 order, it can be seen that, proceedings were initiated against the petitioner on two grounds; firstly, it is alleged that, the petitioner had availed input tax credit wrongly and secondly, it is alleged that, the petitioner had distributed the ITC among the other units of the company, without obtaining a registration as an ISD and hence, violated the statutory provisions. Thus, the contentions raised by the parties are to be considered in respect of the above two issues.

9. The finding regarding wrongful availment of ITC:

9.1. The wrongful availment of the ITC alleged against the petitioner is on the reason that, Ext.P4 invoice was issued by a foreign company in the name of the Delhi unit of the petitioner company, which



is having a separate registration under the CGST Act, whereas, the ITC was claimed by the petitioner. Thus, according to the respondents, since the supply was received by the Delhi unit, the petitioner, which is stationed and having registration in Kerala, could not have availed the ITC in respect of the said transaction.

9.2. The learned Senior Counsel appearing for the petitioner brought to the attention of this Court, various legal provisions under the CGST Act that are applicable to the case, while challenging the finding of the respondent on the same issue. The learned Senior Panel Counsel for the respondents stoutly opposed the above contentions.

9.3. I have carefully gone through the statutory provisions relevant to the issue and examined the contentions raised from either side. Section 9(3) of the CGST Act provides for the collection of tax on reverse charge basis, by the recipient of such goods or services or both, in respect of certain categories, as notified by the Government. Invoking the said powers, Notification No.10/2017-Integrated Tax (Rate) dated 28.6.2017 was published. As per the same, in respect of a service supplied by any person who is located in a non taxable territory, to any person other than non taxable online recipient, the liability of the tax should be discharged on reverse charge basis, by the recipient of service



located in the taxable territory. Thus, the tax liability has to be discharged by virtue of the stipulations in section 9(3) r/w the notification referred to above, by the recipient of service. A recipient is defined under section 2(93) of the CGST Act which reads as follows:

Section 2 (93). "Recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;"

Section 16 of the CGST Act provides for the eligibility and condition for input tax credit which reads as follows:

"Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;



(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both;

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41 , the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

.....
....."

As per Section 16(2)(a) of the Act, the ITC can be claimed by a registered person, if he is in possession of a tax invoice or debit note



issued by a supplier registered under the Act or such other tax paying document as may be prescribed. Thus, it is evident that, claim of ITC must be based on a *tax invoice issued by a supplier registered under the Act* or based on *other tax paying documents as may be prescribed*. In this case, there is no dispute that the supply is made by a person not registered under the CGST Act and therefore what is relevant for the purpose of claiming ITC, is the *other tax paying documents as may be prescribed*.

9.4. Rule 36 of the CGST Rules, 2017 provides for the documents that are required for claiming ITC:

"Rule 36. Documentary requirements and conditions for claiming input tax credit.-(1) *The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-*

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

*(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document **Provided** that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value*



of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.”

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful mis-statement or suppression of facts under section 74.

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

*(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1**, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility; and*

*(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.”*

It is to be noted that, sub-rule 1(b) of Rule 36 provides that, an invoice issued in accordance with the provisions of clause (f) of sub section (3) of Section 31 can form the basis of the claim of ITC. Section 31 of the Act provides for the tax invoices and the manner in which the such tax invoices will have to be raised. As per clause (f) of sub-section (3) of section 31, a registered person, who is liable to pay tax under sub-section (3) or sub section (4) of Section 9, shall, within the period as may be prescribed, issue an invoice, in respect of goods or services or both, received by him from the supplier, who is not registered on the date of receipt of goods or services or both. Since section 9(3) of the Act, provides for the liability of tax on reverse charge basis, the effect of conjoined reading of sections 16(2) and 31(3)(f) of the Act r/w R.36 of



the CGST Rules is that, when a person liable to pay tax under section 9(3) raises an invoice based on reverse charge basis, such invoice can form the basis of input tax credit as contemplated under section 16(2)(a) of the Act r/w Rule 36 of the CGST Rules 2017.

9.5. In this case, it is evident that, the petitioner being the recipient of services supplied by a foreign company (a non registered supplier), in fulfilment of its obligations under section 9(3), raised an invoice as required under section 31 of the CGST Act r/w Rule 36 of the CGST Rules, paid the tax based on such invoice, and claimed the ITC for the tax paid, on the strength of Section 16(2)(a) of the CGST, Act. Thus, all such transactions/actions of the petitioner were based on the relevant statutory provisions, and therefore, are perfectly in tune with the statutory requirements. Hence, the ITC availed by the petitioner is legally sustainable.

9.6. In Ext.P1 order, the respondent treated the invoice issued by the foreign company as the relevant document, for the purpose of determining the issue regarding the right of the petitioner to claim the ITC, without giving due emphasis to the self invoice issued by the petitioner. However, as mentioned above, section 16(2)(a) provides that, for claiming ITC, there must be, either the tax invoice or debit note issued by the supplier registered under the Act, or such other tax paying



documents as prescribed. Since the invoice issued by the foreign company is not an invoice issued by a registered supplier, the same could not have been treated as relevant, for the purpose of ITC. Thus, what is relevant is the other tax paying document, as prescribed in Rule 36, which, in this case is, Ext P5 self invoice issued by the petitioner and therefore, the said observation of the respondents cannot be accepted.

9.7. Of course, in Ext.P1, it was also observed that, as the invoice issued by the foreign company was in the name of Delhi unit of the petitioner, which is having separate registration, the petitioner could not have claimed the benefit of ITC thereof. In this regard, the definition of "recipient of supply of goods and services" as provided in section 2(93) is relevant. This is because, as per section 9(3) of the Act r/w the Notification 10/2017 dated 28.06.2017, the liability to pay the tax on reverse charge basis is on the recipient of goods or services or both. As per section 2 (93) (a) of the CGST Act, where consideration is payable for supply of goods or services or both, the person who is liable to pay the said consideration shall be the recipient. In this case, acknowledging that the petitioner had received the supply covered by the Ext.P4 invoice issued by the foreign company, the petitioner discharged the entire liability towards the consideration for the transaction and also paid the tax, as evidenced by Exts P5 and P6. Thus, on account of the same,



the petitioner became qualified to be treated as the “recipient” as defined under Section 2(93) of the Act and also that the petitioner had discharged the tax liability. Therefore, under no circumstances, it can be held that, the petitioner is not entitled to claim the ITC.

9.8. Thus, in the light of the above discussion, it is held that, the ITC claimed by the petitioner is in tune with the statutory stipulations under the CGST Act, and the findings contrary to the same in Ext.P1 are not legally sustainable.

10. The issue regarding the distribution of ITC without obtaining registration as an Input Service Distributor (ISD)

10.1. As per the findings in Ext.P1, the distribution of ITC among the other units of the petitioner company with separate registrations, could have been affected by the company only through the input service distribution mechanism, which requires registration mandatorily, and since the petitioner had carried out the distribution without such registration, it had violated the relevant provisions in this regard. On the other hand, the specific contention raised by the learned Senior Counsel for the petitioner is that, as on the date of the relevant transactions, it was not mandatory for the petitioner to obtain registration as ISD, for the purpose of distribution of ITC among the other units of the company. According to the learned Senior Counsel, the



input service distribution mechanism contemplated under the Act was only an option available to the taxpayer and nothing precluded such taxpayer from distributing the ITC otherwise than through the said mechanism.

10.2. While considering the said question, the relevant provisions which stood at the time of transactions viz; July 2017 to March 2019 are to be examined. Section 2(61) of the CGST Act, read as follows:

"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office"

10.3. Section 20 of the CGST Act prior to its amendment made as per Finance Act, 2024, (notified w.e.f 1.04.2025) reads as follows:

"20. Manner of distribution of credit by Input Service Distributor.-(1) *The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.*

(2) The Input Service Distributor may distribute the credit subject to the following conditions,

namely: -

- (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;*
- (b) the amount of the credit distributed shall not exceed the amount of credit available for*



distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation. For the purposes of this section, -

(a) the "relevant period" shall be-

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover,



reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule”

10.4. As per amendment made by the Finance Act, 2024, the said provision reads as follows:

“Manner of distribution of credit by Input Service Distributor.

20. (1) *Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9 of this Act or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.*

(2) *The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 of this Act or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.*

(3) *The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.”*

10.5. A careful reading of unamended section 20 would indicate



that, the same is only an enabling provision that provides for distribution of ITC through the mechanism of input service distribution. There is nothing in the said provision which would indicate that, the distribution has to be done, only through an ISD registered under the Act. The intention of the legislature that it was not mandatory prior to the amendment, is very much evident from amended section 20 itself, where it starts with the words *"Any office of the supplier of goods or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub section (3) or sub section (4) of section 9, for or on behalf of distinct persons referred to in section 25 **shall be required to be registered** as Input Service Distributor....."* Thus, the mandatory requirement of the registration for any office of the supplier of goods, which receives tax invoices including the invoices under reverse tax mechanism, is clearly specified in the amended provision, whereas, in the unamended provision, there is no such requirement. On the contrary, the unamended provision only provides that, the input service distributor shall distribute the input credit of tax, subject to the conditions stipulated therein and the said provision does not provide that, all the suppliers of goods or the persons liable to pay tax shall get registration as ISD, for distributing the ITC among the distinct persons specified under section 25(4) of the Act.



10.6. The fact that, as per the unamended provision, the legislature never intended to confine the distribution of ITC, only through the ISD mechanism, is evident from the minutes of the meeting of the GST Council, where the amendment to the said provision was mooted. In 50th GST Council meeting held on 11.7.2023, this issue was discussed as agenda 3(xix). It is mentioned therein as follows:

"7.1.1.3 Law Committee took a view that there is no intent in the present provision of CGST Act to make ISD mechanism mandatory, and accordingly, it may be clarified through a circular that it is not mandatory to follow ISD procedure laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs and that such credit can also be passed on by HO by issuing tax invoices under section 31 of CGST Act to the concerned BOs. In cases, where HO wants to distribute credit through ISD mechanism, it shall be required to get itself registered mandatorily as per provisions of section 24(viii) of CGST Act. Further, it may also be clarified that HO can distribute the ITC to a BO through ISD mechanism or can issue invoice under section 31 to a BO in respect of an input services received from a third party only if the said services are being supplied to the concerned BO.

7.1.2.1 Law Committee took a view that ISD procedure, as laid down in Section 20 of CGST Act read with rule 39 of the CGST Rules, may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. Further, ITC on account of input services received from a third party, where



such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. This will require amendment in law which the Law Committee may formulate in due course."

It is evident from the above that, the GST Council never intended the ISD to be made mandatory prior to the amendment, for the purpose of distribution of the ITC.

10.7. It is also pertinent to note in this regard that, in FAQ on IT and IT enabled services, it was mentioned as follows:

"Question 26: Is the requirement of transferring of credit through ISD mechanism mandatory?"

Answer: The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an Input Service Distributor."

The fact that, the legislature never wanted to make the distribution through ISD mechanism mandatory, is evident from the same as well. From the above it is clear that, as the transactions which are the subject matter of Ext.P1 took place at the time, the unamended section 20 of the CGST Act was in force, it cannot be held that, the petitioner committed any illegality, while distributing the ITC to the other units/distinct persons. In other words, the fact that, the petitioner distributed the ITC without the registration as ISD, cannot have any consequence at all.

10.8. It is true that, in Ext P1 order, the respondent relied on



the stipulations in Section 24 (viii) of the CGST Act, to show that the registration as ISD was mandatory. The said provision contemplates that, notwithstanding any contained in sub-section (1) of section 22, the categories mentioned sub clauses (i) to (xii) therein are required to be registered under the Act. Sub clause (viii) thereof, provides for mandatory registration of ISD, whether or not separately registered under the Act. However, the said provision cannot be interpreted to mean that, when a Company is distributing the ITC among its other units in the course of the business, it has to be treated as an ISD which requires mandatory registration. The contention of the respondent in this regard cannot be accepted, in the light of the amendment made to section 20 of the CGST Act as per Finance Act, 2024, by which, mandatory registration of the office of the taxpayer which is distributing the ITC as ISD is contemplated, and the views expressed by the GST Council as referred to above, as well as the answer given in the FAQ mentioned above. The stipulation in section 24(viii) can only be interpreted to mean that, if the office of the company/entity registered under the Act, wants to act as an ISD, it must have a registration. In the absence of any specific prohibition in the Act, the said provision would not mean that, the supplier or the person liable to tax cannot distribute the ITC otherwise than through the registered ISD. This view



finds in support of a decision rendered by the Karnataka High Court in **Micro Labs Limited Ltd v. State of Karnataka [2025 SCC OnLine Kar 28321]**.

10.9. Apart from the above, the learned Senior Counsel for the petitioner also raised a contention that, the transaction of availment of ITC on input of service, and the action of the petitioner cross charging the same to the other units for the reason that, the imported services were availed by the said units also, is a revenue neutral transaction, and hence it could not be interfered with. This is because, the said transaction does not cause any revenue loss to the Department of CGST and therefore the proceedings initiated as per Ext.P1 on mere technical ground that the petitioner did not take registration, particularly when there is no mandatory requirement for taking registration, was completely unwarranted. I find merits in the said contention. It is to be noted that, in this case, the petitioner had discharged the burden of paying tax on its own and what the petitioner had done was, to avail the ITC which, the petitioner was entitled to as per the law and since those services were availed by the other units of the petitioner also, it was distributed among the said units. None of the transactions resulted in any loss to the Government, as the tax payable in respect of the transaction is already paid. In such cases where there is no question of



evasion of tax, a liberal approach ought to be taken while interpreting the statutory provisions, thereby providing maximum benefits possible to the bonafide taxpayers. Imposing huge liability upon such taxpayers on technical reasons, when the taxpayer has paid the tax on its own without any compulsion, cannot be justified under any circumstances, as it is against the spirit and purpose of the CGST Act, which is intended to provide a simple and seamless procedure for the assessment, payment and collection of tax. In such circumstances, I find that, the petitioner is entitled to the reliefs sought for.

Accordingly, this writ petition is disposed of quashing Ext.P1, to the extent it held that, the ITC of Rs.1,31,14,220/- (Rupees one crore, thirty one lakhs, fourteen thousand, two hundred and twenty only) claimed by the petitioner was ineligible, and that, the petitioner had distributed the ITC among the other units of the company illegally. Consequently, the demand made therein and the penalty imposed based on the said finding are declared as not legally sustainable.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

APPENDIX OF WP(C) NO. 30075 OF 2024

PETITIONER EXHIBITS

EXHIBIT P1	TRUE PHOTOCOPY OF THE IMPUGNED ORDER -IN- ORIGINAL NO. 12/2024-25-GST-KKD DATED 20.06.2024
EXHIBIT P2	TRUE PHOTOCOPY OF THE REGISTRATION CERTIFICATE
EXHIBIT P3	TRUE PHOTOCOPY OF THE INCORPORATION CERTIFICATE
EXHIBIT P4	TRUE PHOTOCOPY OF THE INVOICE DATED 31.08.2017 ISSUED BY THE FOREIGN COMPANY
EXHIBIT P5	TRUE PHOTOCOPY OF THE TAX INVOICE DATED 31.08.2017
EXHIBIT P6	TRUE PHOTOCOPIES OF THE RCM INVOICES (TAX PAYMENT) ISSUED BY THE PETITIONER
EXHIBIT P7	TRUE PHOTOCOPIES OF THE INVOICES ISSUED BY THE NOTICEE FOR CROSS CHARGE
EXHIBIT P8	TRUE PHOTOCOPY OF FORM ADT-01 DATED 29.10.2020 ISSUED BY THE RESPONDENT
EXHIBIT P9	TRUE PHOTOCOPY OF THE REPLY LETTER DATED 15.11.2020 SUBMITTED BY THE PETITIONER
EXHIBIT P10	TRUE PHOTOCOPY OF THE INTIMATION ISSUED BY THE RESPONDENT DATED 01.09.2021
EXHIBIT P11	TRUE PHOTOCOPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER DATED 13.09.2021
EXHIBIT P12	TRUE PHOTOCOPY OF THE EMAIL COMMUNICATIONS BETWEEN THE RESPONDENT AND PETITIONER DATED 17.11.2021, 18.11.2021 AND 22.11.2021
EXHIBIT P13	TRUE PHOTOCOPY OF THE AUDIT ENQUIRY NOTICE ISSUED BY THE RESPONDENT DATED 22.11.2021
EXHIBIT P14	TRUE PHOTOCOPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER DATED 26.11.2021 SENT TO THE AUTHORITIES ON 27.11.2021



- EXHIBIT P15 TRUE PHOTOCOPY OF THE NOTICE DATED 16.12.2021
- EXHIBIT P16 TRUE PHOTOCOPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER DATED 12.01.2022
- EXHIBIT P17 TRUE PHOTOCOPY OF THE FINAL AUDIT REPORT DATED 15.02.2022
- EXHIBIT P18 TRUE PHOTOCOPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 11.05.2022
- EXHIBIT P19 TRUE PHOTOCOPY OF THE SCN DATED 15.06.2022
- EXHIBIT P20 TRUE PHOTOCOPY OF THE LETTER DATED 08.07.2022 SUBMITTED BY THE PETITIONER
- EXHIBIT P21 TRUE PHOTOCOPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER DATED 08.08.2022
- EXHIBIT P22 TRUE PHOTOCOPY OF THE LETTER DATED 01.02.2023 SUBMITTED BY THE PETITIONER
- EXHIBIT P23 TRUE PHOTOCOPY OF THE LETTER DATED 17.05.2023 SUBMITTED BY THE PETITIONER
- EXHIBIT P24 TRUE PHOTOCOPY OF THE ADDITIONAL SUBMISSION DATED 26.07.2023
- EXHIBIT P25 TRUE PHOTOCOPY OF THE CIRCULAR NO. 199/11/2023-GST DATED 17.07.2023
- EXHIBIT P26 TRUE PHOTOCOPY OF THE PERSONAL HEARING INTIMATION LETTER SIGNED ON 07.02.2024