HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 4266/2023
CNR: RJHC010191382023 | URN: CW / 9617U / 2023

M/s Shree Karni Electrovision, Having Its Principal Place Of Stambh, Bikaner, Rajasthan, 334001, Through Its Managing Partner - Mr. Rajeev Singh Yadav Son Of Mr. Jethu Singh Yadav, Aged 47, Residing At Ward No. 8, Udairamsar House, Near Man Mandir, Kanta Kathura, Colony, Bikaner, Rajasthan - 334003

----Petitioner

Versus

1. Union Of India, Through Secretary To The Government Of India, Central Board Of Indirect Taxes And Customs, North Block, Central Secretariat, New Delhi - 110001
2. State Of Rajasthan, Through Joint Secretary To Government, Finance Department (Tax Division), Government Secretariat, Jaipur, Rajasthan - 302005
3. The Deputy Commissioner, Central Goods And Services Tax, Division - R, Bikaner, Rajasthan.
4. The Superintendent, Central Goods And Services Tax, Range - Xxiv, Bikaner, Rajasthan.
5. Techno Kart India Limited, D-126, 2Nd Floor, Janpath Shyam Nagar, New Sanganer Road, Jaipur, Rajasthan 302019 Having Gstin 08Aabce3142P1Zh

----Respondents

For Petitioner(s)	:	Mr. Pankaj Arora Mr. Ranjan Mehta (through VC)
For Respondent(s)	:	Mr. Harshvardhan Singh for Mr. Mahaveer Bishnoi, AAG Mr. Rajat Arora Mr. Mudit Vaishnav

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HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

17/08/2026

1. The instant writ petition has been preferred seeking the following reliefs:

> *"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to issue an appropriate writ of Mandamus, certiorari and prohibition or any other appropriate order/ direction and kindly:*
>
> *a) To hold that section 16(2)(c) of CGST Act read with RGST Act is ultra vires in absence of mechanism to ensure the payment of taxes by the supplier into the government treasury while taking the eligible input tax credit or in alternative, read down condition laid out in section 16(2)(c) as it compels the taxpayer to verify the payment of taxes which he cannot do in absence of availability if system by the government (lex non cogit ad impossibilia);*
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> *b) To quash the impugned order under section 74 of CGST Act read with RGST Act dated 24 November 2022 (enclosed as Annexure 2) as illegal, manifestly arbitrary and issued against the principals of natural justice;*
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> *c) To quash the impugned order dated 24 November 2022 (Annexure 2) as Respondent no. 4 has acted as judge in his own case which is against the principals of natural justice;*
>
> *d) To quash the impugned order dated 24 November 2022 (Annexure 2) as it hampers the vested asset of the petitioner under Article 300A of the constitution of India;*
>
> *e) To issue a writ of Certiorari or any other appropriate writ, order or direction, in the nature of writ quashing the impugned order dated 24 November 2022 (Annexure 2);"*

2. At the outset, learned counsel for the petitioner-firm has challenged the validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "Act of 2017") read with the Rajasthan Goods and Services Tax Act, 2017. He submits that the petitioner-firm is a registered body under the Act of 2017 read with the Rajasthan Goods and Services Tax Act,

2017 and is engaged in the business of supplying electronic goods.

2.1. Learned counsel submits that the petitioner procured electronic goods from M/s Techno Kart India Limited, a retail arm of the Videocon Group, amounting to Rs.59,42,860.91/-, and tax thereon amounting to Rs.13,00,000/-, consisting of Rs.6,50,000/- towards CGST and Rs.6,50,000/- towards RGST, arose during the period between December, 2017 to January, 2018.

2.2. Learned counsel submits that the tax was required to be paid by the supplier, who was responsible for depositing the said tax with the Government. The petitioner, being the procurer, applied for Input Tax Credit of the tax amount on the basis that the supplier had already paid the corresponding tax. He further submits that thereafter the supplier became insolvent and proceedings were initiated under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC"). It is also submitted that the respondents failed to claim their tax against the supplier in the said proceedings, as required under the GST Act. Learned counsel submits that since the respondents failed to do so and the tax liability remained unpaid, the same has subsequently been imposed upon the present petitioner under Section 16(2)(c) of the Act of 2017, which is unlawful.

2.3. Learned counsel further submits that once the insolvency proceedings had been initiated against the supplier, the tax liability of the supplier was required to be dealt with in accordance with the provisions of the IBC; and once the procurement had been made by the petitioner, therefore, he cannot be compelled to refund the Input Tax Credit, which he has availed in accordance with law.

2.4. Learned counsel has also referred to the judgment of Hon'ble Apex Court in ***Ghanashyam Mishra & Sons (P.) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.; [2021] 126 taxmann.com 132 (SC)***, decided on April 13, 2021. Relevant para of the same is reproduced as under:

> *"**95**. In the result, we answer the questions framed by us as under:*
>
> *(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;"*

3. *Per contra*, learned counsel for the respondents submits that Section 16(2)(c) of the Act of 2017 puts an absolute condition that the tax charged in respect of the supply must actually be paid to the Government and, in case the purchaser is not diligent and the tax has not been paid by the supplier, the purchaser shall also have liability in respect of the Input Tax Credit so availed. He further submits that the Input Tax Credit wrongly availed by the present purchaser/petitioner is liable to be refunded/recovered, as Section 16(2)(c) of the Act of 2017 provides the mandate for recovery of the same.

3.1. Learned counsel for the respondents has placed reliance upon the judgment of Hon'ble High Court of Gujarat at Ahmedabad in ***Maruti Enterprise through its authorized partner, Jigneshbhai Bharatbhai Tarpara Vs. Union of India & Ors.*** (R/Special Civil Application No.18080 of 2023 and other connected matters), decided on 01.05.2026. Relevant paragraphs of the same are reproduced as under:

> *"64. Even in a situation where the supplier fails to remit the tax collected from the purchasing dealer, the latter is not without recourse. The purchasing dealer may pursue appropriate remedies against the supplier, while the Government retains the authority to recover the unpaid tax from the defaulting supplier. The mere absence of a speci c statutory mechanism enabling recovery by the purchasing dealer from the supplier cannot, by itself, render Section 16(2) (c) of the CGST Act ultra vires.*
>
> *65. The entitlement to input tax credit operates on the statutory assumption that the tax collected by the supplier has been duly remitted to the Government. Credit is reflected in the Electronic Credit Ledger maintained by the State only upon such payment. Consequently, unless the tax collected by the supplier is deposited with the Government, the purchasing dealer cannot claim ITC as a matter of right. In such circumstances, the principle of double taxation is not attracted.*
>
> *66. In any event, where the Department subsequently recovers the tax from the supplier, the purchasing dealer who has borne the tax incidence may seek appropriate relief in accordance with law. At this stage, it is apposite to consider the doctrine of reading down. 67. Thus, where a Court, upon a plain and literal interpretation of a statutory provision, nds that it gives rise to constitutional or legal in infirmities, it may resort to the doctrine of reading down. However, in the present case, Section 16(2) (c) of the CGST Act is clear, self-explanatory, and unambiguous. Its plain reading does not give rise to any constitutional or legal in infirmity. The underlying intent of the provision is that the Government cannot be deprived of revenue on account of illegal or defaulting conduct on the part of the supplier.*
>
> *68. 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.

69. It may also be noted that neither the Delhi High Court in the case of ***On Quest Merchandising India (P) Ltd. (supra)*** *nor the Tripura High Court has examined the e ect of Section 155 of the CGST Act, which reads as under:*

> *"Section 155 – Burden of proof: Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."*

70. Thus, the purchasing dealer must discharge the initial burden of establishing eligibility to claim input tax credit. Such eligibility is intrinsically linked to the fulfilment of statutory conditions, including the deposit of tax by the supplier with the Government. The expression "eligible" in Section 155 of the CGST Act cannot be construed as dependent upon a unilateral act of claim by the purchaser; rather, it has a direct nexus with the actual payment of tax by the supplier.

71. The non-deposit of tax and claim of ITC by both the supplier and purchaser has a cascading effect on the purchaser who becomes a subsequent supplier and he in turn further supplies the goods. Thus, unless the seller deposits the eligible tax on supply of goods, the subsequent purchaser while further supplying the goods can only apply the credit in case the supplier has deposited the amount so collected in the government. The private transaction between supplier and the purchaser cannot be taken into account by the revenue unless there is a payment of tax in revenue arising from such transaction.

72. Both the supplier and the purchaser are integral to the tax chain and must discharge their respective obligations to ensure the integrity of the GST framework. The scheme of the Act contemplates that a bona fide purchaser must exercise due diligence and, upon becoming aware of non-compliance by the supplier, refrain from further transactions that would perpetuate the credit chain.

73. Section 16(1) of the CGST Act deals with the eligibility of a dealer to avail ITC and clause (a), (b), (c) & (d) of Section 16(2) of the GST Act deal with the conditions for enabling such bene ts. Clause (a), (b), (c) & (d) of Section 16(2) of the CGST Act should be read and satis ed together and not separately to avail the bene t of ITC. Clause (c) of Section 16(2) of the CGST Act clearly states that ITC will be available to the purchasing dealer only if the supplier has paid the tax to the Government. It is for the purchasing dealer to prove that the tax collected has been remitted to the Government by the supplier.

FRAMEWORK OF SECTION 16(2)(C), Section 41(2) & RULE 37(A) :-

74. 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.*

75. The operational procedure for this reversal and re availing was introduced via Rule 37A on December 26, 2022. This rule o ers a grace period, allowing recipients to retain ITC even if the supplier has not paid the tax by September 30 of the following financial year. Recipients are granted until November 30 to reverse the ITC; interest liabilities only accrue if the reversal is missed beyond this November deadline. While Section 16(2)(c) must be strictly observed to protect government revenue, the provisions of Section 41 and Rule 37A acknowledges that recipients should not be unfairly penalized for a supplier's default. Section 41 of the CGST Act, 2017 has been fully substituted through Finance Act, 2022. Section 41(2) of the CGST Act, 2017 provides that the recipient of credit must reverse ITC claims if the supplier has not deposited taxes. Further, proviso to section 41(2) of the CGST Act, 2017 allows the buyer to re-avail or re-claim such reversed ITC later when the suppler pays tax. Thus, the legal frame work of the provisions of Section 16(2)(c) read with Section 41(2) read with Rule 37A maintains the interest of revenue and the purchaser.

76. The petitioners have heavily placed reliance on the maxim Lex Non Cogit Ad Impossibilia, which means that the law does not compel a man to do that which he cannot possibly perform, is closely connected to the maxim Impotentia Excusat Legem, which means a disability that makes it impossible to obey the law can be excused. However, the scheme of the GST regime does not strictly attract the intent of the maxim. As previously held by us, the provisions of Section 41 of the CGST Act read with Rule 37A of the CGST Rules, 2017 recognizes that purchaser are not unfairly penalized for a supplier's default. It is true that the purchasers cannot compel the supplier to deposit tax with the government, thereby seek strict compliance of the provisions of Section 16(2)(c) of the CGST Act, but simultaneously they can avoid the circumstances by due care and caution. The GST regime operates on the contract/agreement between two parties. While entering into an agreement, a purchaser can ensure there is a clause that takes care of the lacuna and holds the supplier liable to indemnify the purchaser if the said purchasing dealer suffers a loss due to a default by the supplier to remit to the government the tax collected from the purchaser. Such clauses can be made part of the agreements covering such situations.

77. The following conditions must be satisfied for Rule 37A of CGST Rules, 2017 to apply- i) The recipient has claimed ITC on such invoice based on the record shown in GSTR-2B. ii) The supplier has not deposited the tax on such invoice/debit note. iii) The supplier has not led the GSTR-3B with the corresponding invoice/debit note. Pertinently, the ling of GSTR-3B does not inherently guarantee that the tax has been paid in full. The provisions of Section 16(2)(c) of the CGST Act 2017 are invoked when the corresponding payment of

Tax has not been fulfilled by the supplier. Likewise proviso to Section 41(2) mentions that the purchaser can reclaim the reversed ITC later on when the supplier pay the tax.

78. Now, the proposition advanced by the petitioners that the provisions of Section 16 of the CGST Act and the clauses mentioned therein are to be read independently is misconceived. It was contended before us that the Revenue must stop at the stage of clause (b) of sub-section (2) of Section 16 of the CGST Act and, once that exercise is complete, cannot proceed to clause (c). We do not subscribe to the submissions advanced by the petitioners.

79. ITC falls under Chapter V and Section 16 of the CGST Act deals with the eligibility and conditions for availing such credit. The provision itself contains the necessary checks and balances for claiming input tax credit. The first and foremost condition is that a dealer (registered person) must be in possession of a tax invoice or debit note issued by a supplier registered under the Act. The second condition, as stipulated in clause (b), is that the registered person must have received the goods or services or both. This clause further incorporates twin conditions under sub-clauses (i) and (ii), which mandate that the goods are delivered by the supplier to the recipient or to any other person on the direction of the registered person, and that services are provided by the supplier to any person on account of such registered person. Clause (c) further stipulates compliance with the requirement of actual payment of the tax charged to the Government.

80. Thus, the Revenue cannot be directed to stop at clause (b), since eligibility for input tax credit is established only after the receipt of goods or services or both, and upon the tax charged in respect of such supply being duly paid to the Government. A registered person (dealer) cannot be held entitled to claim input tax credit unless all the conditions up to clause (c) are satisfied. As per the provisions of Section 155 of the CGST Act, the burden lies upon the dealer to establish entitlement up to the stage of clause (c), and such benefit cannot be availed by merely satisfying the requirement under clause (b). Hence, the clauses under sub-section (2), from (a) to (d), are to be read conjointly and not independently of each other."

4. This Court has considered the rival submissions and perused the material available on record.

5. This Court has also considered the judgment of the Hon'ble Apex Court in ***Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., [2021] 126 taxmann.com 132 (SC)***, relied upon by learned counsel for the petitioner, on the aspect of the effect of an approved resolution plan under the provisions of the IBC.

6. Section 16(2)(c) of the Central Goods and Services Tax Act, 2017, reads as under:-

> "***Section 16. Eligibility and conditions for taking input tax credit.***
> *(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,---*
> *xxxx*
> *xxxx*
> *(c) subject to the provisions of 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*
> *xxxx"*

7. This Court finds that Section 16(2)(c) of the Act of 2017 is a mandatory condition, subject to Section 41 of the CGST Act/RGST Act, requiring that the tax charged in respect of the supply be actually paid to the Government and, unless the same is paid, the availing of Input Tax Credit is prohibited. The purchaser, without ascertaining whether the supplier has paid such tax, should not have availed the Input Tax Credit and, once he has availed the same without the supplier having paid the liability arising out of Section 16(2)(c) of the Act of 2017, recovery of the same becomes permissible in accordance with law.

8. This Court has also considered the judgment of the Hon'ble High Court of Gujarat at Ahmedabad in ***Maruti Enterprise through its authorized partner, Jigneshbhai Bharatbhai Tarpara v. Union of India & Ors.*** (R/Special Civil Application No.18080 of 2023 and other connected matters), decided on 01.05.2026, relied upon by learned counsel for the respondents. The said judgment has considered the challenge to the constitutional validity of Section 16(2)(c) of the Act of 2017, the

plea for reading down the said provision on the ground of *lex non cogit ad impossibilia*, and the interplay of Sections 16(2)(c), 41 and 155 of the Act of 2017 read with Rule 37A of the CGST Rules, 2017. The High Court of Gujarat has held that the conditions contained in Section 16(2) are to be read conjointly, that the burden lies upon the person claiming Input Tax Credit to establish his eligibility thereto, and that Section 16(2)(c) does not give rise to any constitutional or legal infirmity.

9. In light of the aforesaid, this Court finds no ground to interfere with the impugned order dated 24.11.2022. The judgment in ***Ghanashyam Mishra & Sons (P.) Ltd. (supra)***, relied upon by learned counsel for the petitioner, deals with the consequences flowing from an approved resolution plan under the IBC and does not dispense with the statutory condition governing the petitioner's entitlement to Input Tax Credit under Section 16(2)(c) of the Act of 2017.

10. Accordingly, the instant writ petition is ***dismissed***. Pending application(s), if any, shall stand disposed of.

(PRAVEER BHATNAGAR),J (DR.PUSHPENDRA SINGH BHATI),J

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