



*GST ki गणित*

Section 16(4) of CGST Act – Constitutionally valid.

GOBINDA CONSTRUCTION V/S STATE OF PATNA (Patna HC)

CWJC No. 9108 of 2021 dt.08-09-2023

### Facts of the case:

- The petitioner filed its monthly GSTR-1 on time. However, **GSTR-3B** for the period **February 2019** and **March 2019** was filed on **23.10.2019** and **07.11.2019**.
- Department issued a show cause notice on 20.02.2020 proposing to **disallow** ITC for the tax period February and March **2019 on the ground of late filing of GSTR-3B**.

### Petitioner Arguments:

- ITC is a **vested right under Article 300A of the constitution of India**. Therefore, ITC under Section 16(4) of the CGST/BGST Act being in the nature of tax paid at the stage of purchase of goods should be adjusted with the tax payable on sale of goods or services both in computing the tax liability.
- Disallowing ITC by invoking Section 16(4) of the CGST/BGST Act amounts to **double taxation** and, thus, violates the **principle of taxation** on value addition.
- Right to create an input tax is an **indefeasible right** (*K.T. Moopil Nair vs. State of Kerala*, AIR 1961 SC 552)

### Defendant Arguments:

- ITC is in the nature of **benefit/ concession**
- ITC can be availed only as per the scheme of the CGST/BGST Act.
- **Statutory scheme under Section 16** of the CGST/BGST has **uniform application** and cannot be said to be either **arbitrary or violating** any right guaranteed to a registered person under **Article 19(1)(g)** of the Constitution of India.
- The legislature has made the provision under Section 16(4) of the CGST/BGST Act to **prevent a dealer from filing the delayed return**.



**Court Observations and Order:**

1. Does ITC is a vested right? If yes, then whether sec 16(4) of CGST/SGST act deprive right of property under Article 300-A of Constitution of India?
  - **Property** is defined as a **group of rights** inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law.
  - The **rule of Interpretation** is where the **words are clear, no obscurity, no ambiguity** and the **intention of the Legislature is clearly conveyed**, court cannot amend or alter the provisions.
  - **Application of Doctrine of reading down:**
    - when two interpretations are possible, one rendering it constitutional and the other making it unconstitutional, the former should be preferred
    - where the provisions of the **statute are vague and ambiguous** and it is possible to **gather the intentions of the legislature from the object of the statute**, the context in which the **provision occurs** and the **purpose for which it is made**.
  - ITC is in the nature of **benefit/ concession** extended to a dealer under the statutory scheme and the **concession can be received by the beneficiary only as per the scheme of the statute.**
  
2. **Section 16(4)** of the CGST/ BGST Act are **constitutionally valid** and are **not violative of Articles 19(1)(g) and Article 300-A** of the Constitution of India.

**Impact of the case law –**

- The impacts every business in the way they claim ITC in their GST returns as well as books of accounts.
- This impacts the way the law has been interpreted by the taxpayers till date that the ITC can be claimed in September / November month of the next financial year.
- This impacts the way the reconciliations are being made by the business with respect to ITC.