

Constitutionality of time limit for claiming ITC under section 16(4) of the CGST Act is not ultra virus

The Hon'ble Andhra Pradesh High Court in *Thirumalakonda Plywoods v. The Assistant Commissioner [W.P.No.24235 of 2022 dated July 18, 2023]* held that, mere acceptance of GSTR-3B returns with late fee will not exonerate the delay in claiming Input Tax Credit (“ITC”) beyond the period specified under section 16(4) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”).

Facts:

Thirumalakonda Plywoods (“the Petitioner”) is a proprietor engaged in the business of hardware and plywood since March 2020 with the trade mark of ‘Thirumalakonda Plywoods’.

The Petitioner received an e-mail dated December 16, 2021 whereby the Petitioner submitted the reply through e-mail on January 17, 2022, stating that input was availed for March, 2020.

The Petitioner sought an opportunity under section 74(5) of the CGST Act, to avail ITC since the Petitioner had already discharged the late fee for delay in filing the return and the same was challenged through the reply on e-mail with his detailed submissions.

A Show Cause Notice was issued by the Revenue Department (“the Respondent”) on February 22, 2022 (“the SCN”) and an opportunity of personal hearing dated March 02, 2022 was given to the Petitioner. In compliance to the SCN the Petitioner filed a reply stating that the SCN is not in accordance with the provisions of the GST Act and Rules, 2017. The Respondent did not consider the reply submitted by the Petitioner and passed an order (“the Impugned Order”) vide order no. ZH370322OD48625, dated March 14, 2022 holding that the Petitioner made an irregular claim of ITC of an amount of INR 4,78,626 with INR 11,24,994 towards tax, penalty and interest.

Further, the Respondent contended in the Impugned order that the reply filed by the Petitioner was not in accordance to the GST Act and Rules, 2017 thereby it is false to contend that the reply filed by the Petitioner was not considered before passing the Impugned order, therefore no provisions of Articles 14, 16 and 19(1)(g) of the Constitution of India have been infringed.

Aggrieved with the Impugned order the Petitioner filed writ before the Hon'ble Andhra Pradesh High Court.

Issues:

- Whether by virtue of imposition of time limit for claiming ITC, Section 16(4) of the CGST Act violates Article 14, 19(1)(g) and 300A of the Constitution of India?
- Whether Section 16(2) of the CGST Act, would prevail over section 16(4) of CGST Act, and thereby if the conditions laid down in Section 16(2) of the CGST Act are fulfilled, the time limit prescribed under section 16(4) of the CGST Act for claiming ITC will pale into insignificance?
- Whether the acceptance of Form GSTR-3B returns of March 2020 filed on November 27, 2020 by the Petitioner with a late fee of INR 10,000 will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4) of the CGST Act?

Held:

The Hon'ble Andhra Pradesh High Court in ***W.P.No.24235 of 2022*** held as under:

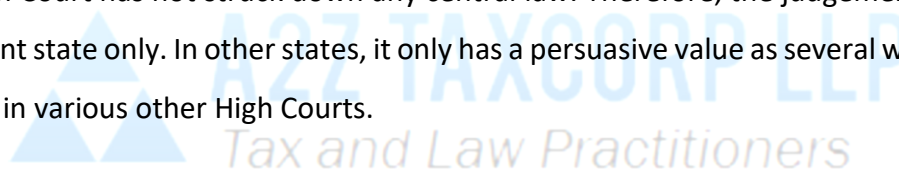
- Observed that, Section 16(2) of the CGST Act has no overriding effect on Section 16(4) of the CGST Act as both are not contradictory with each other, they will operate independently.
- Opined that, mere acceptance of Form GSTR-3B returns with late fee will not exonerate the delay in claiming ITC beyond the period specified under section 16(4) of the CGST Act.

- Held that, the time limit prescribed for claiming ITC under section 16(4) of the CGST Act is not violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.

Our Comments:

The Hon'ble Andhra Pradesh High Court explicitly held that ITC under GST law is a concession/benefit, not a statutory right. Thus, the legislature can impose conditions. Currently, the law allows claiming ITC until November 30 after the end of the financial year or furnishing the relevant Annual Return. The Hon'ble Andhra Pradesh High Court upheld the validity of this timeline. Further, both Section 16(2) & 16(4) of the CGST Act will operate independently.

Thus, taxpayers are advised to ensure timely availing of credits. However, the Hon'ble Andhra Pradesh High Court has not struck down any central law. Therefore, the judgement is binding in the relevant state only. In other states, it only has a persuasive value as several writ petitions are pending in various other High Courts.



(Author can be reached at info@a2ztaxcorp.com)

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