

**Petition challenging Constitutional validity of Sec 16(2)(c) of the CGST Act, i.e. “Credit denied to the buyer when supplier defaults in payment of taxes” on April 19, 2023**

Taxpayers nationwide are subjected to the harsh consequences of Section 16(2)(c) of the Central Goods and Services Tax (“CGST”) / State Goods and Service Tax (“SGST”) Acts, 2017. In situations where suppliers have failed to file returns or remit tax on specific supplies, Input Tax Credit (“ITC”) already obtained by the respective buyers on the said supplies is reversed. Assessment orders are being made by the appropriate officers authorised under the GST Acts based on portal scrutiny. The mismatch between GSTR 2A and GSTR 3B is used to finish assessments levying tax (reversal of alleged ineligible ITC), interest, and penalty.

In response, writ applications contesting the constitutionality of Section 16(2)(c) along with Section 16(4) of CGST Act, 2017 are flooding High Courts across the nation.

**Present stage of litigation**

In *Bharti Telemedia v. Union of India (W.P[C] No.6293 of 2019)*, which is still pending for resolution, the Hon'ble High Court of Delhi has already admitted a writ case challenging the constitutional validity of Section 16(2)(c) along with Section 16(4) of CGST Act, 2017, r/w DGST Act.

The matter was being heard by Justice Rajiv Shakhder and Justice Tara Vitasta Ganju on February 28, 2023. Therefore, it was observed that the embargo imposed under Section 16(2)(c), qua availment of ITC, is analogous to the condition imposed under Section 9(2)(g) of the Delhi Value Tax Act, 2004, which was read down to the extent of bona fide purchases in the case of *Quest Merchandising India Private Limited v. Government of NCT of Delhi* and affirmed by the Supreme Court and opined that, the outcome of this petition will have an impact on other batch petitions challenging provisions as regards availment of ITC including Rule 36(4) of CGST Rules (unamended) and depending on the outcome of this petition, decision

be taken in the remaining matters. The Hon'ble High Court of Delhi listed the matter along with the other pending petitions for hearing on April 19, 2023.

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