

## **Section 16(2)(c) of the CGST Act and Rule 36(4)(c) of the CGST Rules are constitutionally valid**

The Hon'ble Kerala High Court in the case of ***Nahasshukoor v. Assistant Commissioner [WA NO. 1853 OF 2023 dated November 3, 2023]*** dismissed the writ petition and upheld the constitutional validity of Section 16(2)(c) of Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) and Rule 36(4) of the Central Goods and Service Tax Rules, 2017 (**"the CGST Rules"**) thereby holding that, the court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unconstitutional and arbitrary.

### **Facts:**

Nahasshukoor (**"the Appellant"**) was doing business under the name and style of M/s Light House. The Revenue Department (**"the Respondent"**) for the assessment year (**"AY"**) 2017-18 passed assessment order (**"the Order"**), thereby denying Appellant's claim for Input Tax Credit (**"ITC"**) due to difference in GSTR-2A and GSTR-3B. The Respondent, levied interest, imposed penalty and initiated recovery proceedings under the provisions of the CGST Act and State GST Act.

Aggrieved by the Order, filed a writ petition before the Hon'ble Kerala High Court, challenging the constitutional validity of Section 16(2)(c) of the CGST Act and Rule 36(4) of the CGST Rules on the ground that the said provisions are violative of Article 14. The said writ petition was dismissed vide judgement dated September 25, 2023 (**"the Impugned Judgement"**). Aggrieved by the Impugned Judgement, the Appellant filed a Writ Appeal before the Hon'ble Kerala High Court.

### **Issue:**

Whether the Section 16(2)(c) of the CGST Act and Rule 36(4)(c) of the CGST Rules are constitutionally valid?

**Held:**

The Hon'ble Kerala High Court in the case of **WA NO. 1853 OF 2023** held as under:

- Noted that, the court must show judicial restraint to interfere with tax legislation unless it shown and proved that such taxing statute is manifestly unconstitutional. Also, the legislation or a provision can only be struck down when it is manifestly arbitrary. The test to determine manifest arbitrariness is whether the enactment is drastically unreasonable, capricious, irrational, or without adequate determining principle.
- Opined that, the aforementioned provisions are not manifestly arbitrary and under the said circumstances the constitutional validity of the said provisions must fail.
- Held that, the Impugned Judgement is devoid of any illegality or impropriety, Hence, the Appeal is dismissed.

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