

Section 16(2)(c) of the CGST Act constitutionally challenged

The Hon'ble Orissa High Court in ***OSL Securities Ltd. v. Union of India [W.P. (C) No. 2695 OF 2024 dated February 06, 2024]*** granted interim stay in favour of the Assessee in case where the Assessee challenged the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

Facts:

OSL Securities Ltd. ("**the Petitioner**"), filed a writ petition against order dated December 27, 2023, ("**the Impugned Order**") passed by the Revenue Department ("**the Respondent**") under Section 73 of the CGST Act, thereby, challenging the vires (validity) of the clause (c) of sub-section (2) of Section 16 of the CGST Act. The Impugned Order was issued by the Respondent on the ground that the supplier had not shown the transaction with the Petitioner in Form GSTR-3B and tax has been paid by the Petitioner on the supply received.

Held:

The Hon'ble Orissa High Court in ***Writ Petition. (C) No. 2695 OF 2024*** granted interim stay in favour of the Petitioner, thereby holding that, no coercive action should be taken during the pendency of writ petition subject to deposit of 20 percent of the amount of tax payable.

Relevant Provision:

Section 16(2)(c) of the CGST Act:

"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,—

(c) subject to the provisions of section 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”

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