

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.849 of 2022**

M/S Malaya Rub-Tech Industries, a Partnership firm, registered under the Partnership Act 1932, having its registered office at Rubber Bhavan, MC Road, Kodimatha, Kottayam-686013, Kerala, and carrying on its business in the State of Tripura, having its local office at Plot No.24, Rubber Park, Bodhjungnagar Industrial Estate, Bodhjungnagar, West Tripura, Tripura-799008; represented by its authorized representative, Sri Mathew T Thomas, son of T.T. Thomas, having his office at 44/2214/D5-C, Holy Tuesday Shopping Mall, Near St. Antony's Church, Kaloore, Ernakulam, Kerala-682017

.....Petitioner(s);

Versus

1. The Union of India represented by its Secretary, Department of Finance, Government of India, having his office at South Block, New Delhi, Pin-1100001
2. The Secretary, Department of Finance, Government of India, having his office at South Block, New Delhi, Pin-1100001
3. The State of Tripura represented by the Commissioner & Secretary, Revenue Department, Government of Tripura, having his office at Secretariat Building, Pandit Nehru Complex, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura, PIN- 799006
4. The Commissioner & Secretary, Revenue Department, Government of Tripura, having his office at Secretariat Building, Pandit Nehru Complex, PO- Kunjaban, PS - New Capital Complex, Sub-Division- Agartala, District- West Tripura, PIN- 799006
5. The Commissioner of Goods and Service Tax, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District - West Tripura, PIN- 799006
6. The Assistant Commissioner, Department of Revenue, CGST Tripura Division-I, Agartala, Jackson Gate Building 3<sup>rd</sup> Floor, Lenin Sarani, Sub-Division- Agartala, District- West Tripura, PIN- 799001

.....Official Respondent(s)

7. Sri Sentu Dey, son of not known, resident of Jumerdhepa, Sonamura, Sepahijala, Tripura-799115

.....Private Respondent(s)

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For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,  
Ms. Adwitya Chakraborty, Advocate,  
Mr. J. Samed, Advocate.

For Respondent(s) : Mr. Bibhal Nandi Majumder, Sr. Advocate,

Mr. Bidyut Majumder, Deputy SGI,  
Mr. Mangal Debbarma, Addl. G.A.,  
Mr. Samrat Sarkar, Advocate,  
Mr. Biplabendu Roy, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO**  
**HON'BLE MR. JUSTICE BISWAJIT PALIT**

Date of hearing : **10.02.2026**

Date of Judgment & Order : **10.02.2026**

Whether fit for reporting : **YES**

**JUDGMENT & ORDER (ORAL)**

Petitioner is a partnership firm carrying on business of rubber in various parts of the country including the State of Tripura. It was registered under the CGST Act, 2017 and also under the SGST Act, 2017.

2. For the purpose of carrying on its business, it had to purchase certain materials which are used in furtherance of manufacturing of finished products from respondent No.7 for the period stretching from 08.03.2018 to 30.11.2018.

3. According to the petitioner, prior to effecting purchases of the input materials from respondent No.7, for production of the finished materials, petitioner had paid off the due taxes payable therefor, and even the materials purchased had been utilized in the course of manufacturing of the finished products, and therefore the petitioner was entitled to Input Tax Credit ["ITC", *for short*].

4. It is also stated that the petitioner was under a bona fide belief that respondent No.7 had deposited the due taxes payable by the petitioner, and so the petitioner claimed benefit of ITC admissible to it.

5. But the respondent No.6, exercising powers under Section 73(1) of the CGST Act, 2017 had issued a show cause notice on 14.01.2021 to the

petitioner stating that for the tax period stretching from August, 2017 to July, 2019, the due tax has either not been paid or paid short or refunded or released erroneously or the ITC was wrongly availed or wrongly utilized by the petitioner, and asked the petitioner to show cause why Rs.22,09,964.04/- should not be recovered from the petitioner.

6. In the same notice, the petitioner was asked to furnish reply, and the petitioner submitted a reply on 29.12.2021.

7. Thereafter, an order dt.17.02.2022 was passed by the sixth respondent saying that the petitioner had unauthorizedly claimed ITC, and directed the petitioner to make the payment of the above mentioned amount.

8. Challenging the same, this Writ Petition has been filed.

9. It is the contention of the petitioner that the wording of the show cause notice dt.14.01.2021 itself is vague, evasive, and the allegations are mutually contradictory, and because it is vague, the show cause notice itself cannot be sustained.

10. Petitioner also contended that Section 16(2)(c) has been wrongly invoked to deny ITC to the petitioner, since the transaction between the petitioner and the seventh respondent was a bona fide transaction, and there was no mechanism under the CGST/SGST Act, 2017 by which the petitioner could compel the seventh respondent to discharge to the respective governments' duty to make over the tax collected by him from the petitioner, and for the default of the seventh respondent in making over the tax paid by the petitioner for the purchase of materials to the respective governments, petitioner cannot be penalized.

11. Counsel for the petitioner also placed reliance on a recent Division Bench judgment of this Court in *M/s Sahil Enterprises v. Union of India & others*<sup>1</sup> dt.06.01.2026.

12. In that judgment, the Supreme Court considered certain judgments of the Supreme Court, Delhi High Court and also the Gauhati High Court, and opined that the Parliament had failed, while enacting Section 16(2)(c) of the Act, to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the Act, and those who did not.

It held that there is need to restrict denial of ITC only to the selling dealers who have failed to deposit the tax collected by them, and not punish bona fide purchasing dealers. It reasoned that a purchasing dealer cannot be asked to do the impossible i.e. to identify a selling dealer, who will not deposit with the Government, a tax collected by him from purchasing dealers, and avoid transacting with such selling dealers.

It was also held that alternatively what Section 16(2)(c) of the Act requires the purchasing dealer to do, is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer; and if the selling dealer fails to do so, undergo the risk of being denied the ITC.

It held that it would be extremely difficult for a purchasing dealer to ensure that the selling dealer deposits the GST collected from him with the Government. It thus concluded that Section 16(2)(c) of the Act places an onerous burden on a bona fide purchasing dealer, and in such circumstances if

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<sup>1</sup> WP(C) No.688 of 2022

the law seeks to visit disproportionate consequences on a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution of India.

It therefore held that the principle of reading down the said provision has to be applied, to save it from the vice of unconstitutionality. It concluded that there is nothing in the language in the Act which expressly enables the respondents to tax a purchaser, who has already paid taxes to the seller, a second time by denying him ITC in all situations, and that Parliament never intended to punish a taxpayer by denying him ITC, if the transaction entered into by him with a seller or supplier, is bona fide.

It therefore upheld the constitutional validity of Section 16(2)(c) of the Act, but held that the said provision cannot be interpreted to deny ITC to purchasers in a bona fide transaction, and it should be read down and applied only where the transaction is found to be not bona fide, or is a collusive transaction or fraudulent transaction to defraud the revenue.

13. The show cause notice dt.14.01.2021 issued by the sixth respondent to the petitioner in the instant case, as well as the order passed on 17.02.2022 by the said officer, do not contain any findings therein that the transaction between the parties i.e. the petitioner and the seventh respondent, is not bona fide, or is a collusive, or a fraudulent transaction to defraud the revenue.

14. If such a situation had been there, certainly the sixth respondent would not have invoked Section 73 of the Act which lays down the procedure for determination of tax for reasons *other than* fraud or any wilful misstatement or suppression of facts. He would certainly have invoked

Section 74 of the Act which lays down the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credited wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.

15. Therefore, the ratio of the judgment in *M/s Sahil Enterprises* (1 supra) is clearly attracted, and the transaction between the parties i.e. the petitioner and the seventh respondent in the instant case, has to be held to be a bona fide transaction, and consequently for the failure of the seventh respondent to make over the tax collected by it from the petitioner, the petitioner cannot be punished by applying Section 16(2)(c) of the Act.

16. Therefore, the Writ Petition is allowed, and the order dt.17.02.2022 passed by the sixth respondent is set aside, and the respondents are directed to forthwith allow the petitioner ITC to the extent of Rs.22,09,964/-. No costs.

**(BISWAJIT PALIT, J)**

**(M.S. RAMACHANDRA RAO, CJ)**

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