

A2Z Taxcorp LLP

ITC cannot be denied to bona fide recipient for supplier's failure to deposit tax with the Government

The Hon'ble Gauhati High Court in *M/s Metal Syndicate and Another v. The Union of India & Ors. [W.P.(C) No. 2960/2026 dated June 05, 2026]* set aside the Order-in-Original and the Order-in-Appeal confirming GST demand of Rs. 78,70,952/- along with interest and equivalent penalty, and held that a **bona fide purchasing dealer cannot be denied Input Tax Credit ("ITC") merely on account of the supplier's failure to deposit the tax collected with the Government.**

The Court reiterated that the Department's remedy in such circumstances lies against the defaulting supplier and not against the genuine recipient, who has discharged all statutory obligations.

Facts:

M/s Metal Syndicate ("**the Petitioner**"), a proprietorship firm based in Silchar, Assam, engaged in trading of scrap/waste batteries, purchased goods from suppliers based in Kolkata during the Financial Years 2017-18 and 2018-19. The Petitioner received the goods along with proper tax invoices and made payments, including applicable GST, through banking channels. ITC was availed and utilized strictly in accordance with Section 16(2) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), and GSTR-1 and GSTR-3B returns were duly filed within the prescribed time.

The Directorate General of GST Intelligence ("**DGGI**"), Guwahati Zonal Unit, issued summons alleging that the Petitioner had availed ineligible ITC on the strength of invoices issued without actual receipt of goods. The Petitioner appeared before the authorities on April 05, 2019, and submitted all relevant documents including GSTR-1, GSTR-3B and purchase invoices. A search was subsequently conducted at the Petitioner's business premises on July 09, 2019, during which **no incriminating material was recovered or seized.**

A2Z Taxcorp LLP

Thereafter, a Show Cause Notice (“SCN”) dated July 28, 2022 was issued alleging wrong availment and utilization of ITC of Rs. 78,70,952/- in violation of Section 16(2)(a) and (b) of the CGST Act. Vide Order-in-Original No. 22/GST/AC/SIL/2023-24 dated February 19, 2024, the Assistant Commissioner confirmed the demand comprising IGST of Rs. 47,12,010/-, CGST of Rs. 15,52,967/- and SGST of Rs. 16,05,975/- for the period July 2017 to March 2019, along with interest under Section 50 of the CGST Act and an equivalent penalty of Rs. 78,70,952/- under Section 74(1) read with Section 122 of the CGST Act and Section 20 of the Integrated Goods and Services Tax Act, 2017. The appeal preferred by the Petitioner was rejected vide Order-in-Appeal dated February 14, 2025.

Aggrieved, the Petitioner approached the Hon’ble Gauhati High Court by way of a writ petition challenging both the impugned orders.

Petitioner’s Contentions:

- The Petitioner had purchased goods from registered suppliers, received valid tax invoices and discharged the full consideration (including GST) through banking channels, thereby complying with all conditions of Section 16(2) of the CGST Act.
- The sole basis for denial of ITC was the alleged failure of the suppliers to discharge their tax liability — a circumstance entirely beyond the Petitioner’s control.
- No effective opportunity of hearing was afforded, and the SCN was not uploaded on the GST portal; notices were served manually beyond the date of hearing.
- The controversy stood squarely covered by the Division Bench ruling of the Hon’ble Gauhati High Court in **National Plasto Moulding v. State of Assam [(2024) 129 GSTR 544 (Gauhati)]**, which in turn relied on the Hon’ble Delhi High Court decision in **On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [(2018) 56 GSTR 177 (Delhi)]**.

A2Z Taxcorp LLP

Issue:

Whether ITC can be denied to a bona fide purchasing dealer solely on account of the supplier's failure to deposit the tax collected with the Government, where the recipient has otherwise complied with all the statutory conditions prescribed under Section 16(2) of the CGST Act?

Held:

The Hon'ble Gauhati High Court in ***W.P.(C) No. 2960/2026*** held as under:

- **Observed that** the Petitioner had purchased goods from registered suppliers, received tax invoices, made payments including GST through proper banking channels and claimed ITC after complying with the statutory requirements prescribed under Section 16(2) of the CGST Act.
- **Noted that** both the counsel for the Petitioner as well as the Department were in consensus that the issue involved stood squarely covered by the Division Bench ruling in *National Plasto Moulding* (supra), wherein the Court, relying on the Delhi High Court decision in *On Quest Merchandising India Pvt. Ltd.* (supra), held that a purchasing dealer cannot be punished for the act of the selling dealer where the latter has failed to deposit the tax collected.
- **Held that** where a purchasing dealer has entered into bona fide transactions with a registered supplier and has complied with the statutory requirements, denial of ITC solely on account of the supplier's failure to deposit tax with the Government would not be justified. The remedy of the Department, in such circumstances, lies against the defaulting supplier and not against the bona fide recipient.
- **Quashed** the impugned Order-in-Original dated February 19, 2024 and the Order-in-Appeal dated February 14, 2025.

A2Z Taxcorp LLP

- **Directed that** the Department shall be at liberty to proceed against the Petitioner in accordance with law in the event materials surface indicating that the transactions in question were not bona fide or were entered into in collusion with the suppliers.

Our Comments:

Section 16 of the CGST Act lays down the eligibility and conditions for availing ITC. Specifically, **Section 16(2)(c)** prescribes that no registered person shall be entitled to ITC unless the tax charged in respect of the supply has been actually paid to the Government, either in cash or by utilization of ITC. This provision has consistently been a flashpoint of litigation, as it effectively transfers the consequences of the supplier's non-compliance onto the genuine recipient, who has no statutory mechanism or practical means to monitor or compel the supplier to deposit the tax collected with the exchequer.

The present ruling reaffirms the well-settled jurisprudential principle that the law cannot impose an *impossible burden of compliance* on a bona fide recipient. The Hon'ble Delhi High Court in *On Quest Merchandising India Pvt. Ltd.* (supra) had, while dealing with the *pari materia* provision under Section 9(2)(g) of the Delhi Value Added Tax Act, 2004, read down the said provision and held that denial of ITC to a bona fide purchaser would be violative of Article 14 of the Constitution. The Hon'ble Supreme Court dismissed the Revenue's Special Leave Petition against the said ruling on January 10, 2018, thereby giving finality to the principle.

The same view has been consistently followed across various jurisdictions:

- The Hon'ble Calcutta High Court in ***Suncraft Energy Pvt. Ltd. v. Assistant Commissioner of State Tax (Bagnan Charge)*** held that the recovery action must first be initiated against the defaulting supplier and only in exceptional circumstances (such as where the supplier is missing, has been deregistered, or where collusion is established) can recovery be effected from the recipient. The Hon'ble Supreme Court dismissed the Special Leave Petition filed by the Revenue against the said order.

A2Z Taxcorp LLP

- The Hon'ble Madras High Court in *D.Y. Beathel Enterprises v. State Tax Officer* set aside the assessment order denying ITC to the recipient on the ground that no enquiry was conducted against the defaulting supplier despite the recipient having discharged the consideration including GST.
- The Hon'ble Allahabad High Court in *Malik Traders v. State of U.P.* and the Hon'ble Kerala High Court in *Diya Agencies v. State Tax Officer*, while broadly affirming the conditions of Section 16(2)(c), have also held that the recipient's claim cannot be rejected on the basis of GSTR-2A mismatches alone, without verifying the supplier's compliance.

It is, however, pertinent to mention that the Hon'ble Kerala High Court in *Nahasshukoor v. Assistant Commissioner*, while recognising the practical challenges during the initial phase of GST rollout, upheld the constitutional validity of Sections 16(2)(c) and 16(4) of the CGST Act.

Until such pronouncement, the ruling in *Metal Syndicate* (supra), being a consistent reaffirmation of the bona fide recipient's right to ITC, serves as a valuable precedent for genuine taxpayers facing identical demands. Recipients facing such proceedings should, as a matter of practice, maintain robust documentation — including tax invoices, e-way bills, transportation records, weighment slips, banking trail and acknowledgments of receipt of goods — to demonstrate the genuineness of their transactions. The Department's right to proceed in cases involving collusion or fraudulent transactions remains preserved, and accordingly, the *bona fide* character of the transaction will continue to be the touchstone of every adjudication.

Accordingly, **the question of the constitutional validity of Section 16(2)(c) — and by extension, the foundational right of a bona fide purchaser to avail ITC — remains open and pending adjudication at the highest judicial level.**

[CLICK HERE FOR OFFICIAL JUDGMENT COPY](#)

A2Z Taxcorp LLP

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

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.

