GSTAT Delhi: Retrospective Cancellation of Supplier's Registration Cannot Wipe Out a Genuine Buyer's ITC

The GST Appellate Tribunal, State Bench Delhi (**"the GSTAT"**) in ***Ram Manohar Meena v. SRH Technologies [APL/59/DEL/2026 dated October 09, 2026]*** dismissed the appeal filed by the Revenue against the order of the First Appellate Authority which had set aside the demand of Input Tax Credit (**"ITC"**) raised on the ground that the supplier's registration was subsequently cancelled with retrospective effect, and held that retrospective cancellation of the supplier's registration does not, by itself, make ITC inadmissible to the recipient on invoices issued while the supplier was registered.

Facts:

M/s SRH Technologies (**"the Respondent"**), a proprietary concern in Delhi trading in computer systems and peripherals, purchased laptops from M/s Maa Gayatri Infotech (**"the Supplier"**) in September and October 2018 under five tax invoices aggregating to ₹2,43,750 and availed ITC of ₹37,184 for FY 2018-19. The Supplier was a registered person on the dates of the invoices, the invoices were reflected in the Respondent's FORM GSTR-2A and the payment was made through banking channels.

On scrutiny of the returns under Section 61 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), a Show Cause Notice No. 51/2023-24 dated November 09, 2023 was issued under Section 73 of the CGST Act alleging that the ITC was not permissible under Section 16 as the Supplier's registration had been cancelled suo moto retrospectively from the date of registration. The notice did not allege that the goods were not received, that the invoices were not genuine or that the Supplier had not paid the tax.

The Superintendent, Range-82, Dwarka Division (**"the Adjudicating Authority"**) vide Order-in-Original dated December 20, 2023 confirmed the demand of ₹37,184 along with interest and

imposed a penalty of ₹10,000 under Section 73(9) read with Section 122(2)(a) of the CGST Act, relying on Section 16(2)(a) and paragraph 7 of Annexure B to Instruction No. 02/2022-GST dated March 22, 2022.

The First Appellate Authority (Joint Commissioner, CGST Appeals-II, Delhi) vide Order-in-Appeal dated September 29, 2025 allowed the Respondent's appeal holding that the Supplier had filed its FORM GSTR-1 and FORM GSTR-3B, that the conditions of Section 16(2) were satisfied and that credit cannot be denied to a genuine buyer merely because the supplier's registration was cancelled retrospectively. Aggrieved, the Revenue filed an appeal under Section 112(3) of the CGST Act before the GSTAT on the direction of the Principal Commissioner, CGST Delhi South by a Review Order dated January 20, 2026.

Contentions:

The Revenue (Appellant) contended that retrospective cancellation of the Supplier's registration showed that the transactions were not genuine, which the First Appellate Authority had not dealt with; that payment of tax to the Government under Section 16(2)(c) was never verified, as payment to the Supplier through bank, invoices and entries in FORM GSTR-2A do not prove deposit of tax; that invoices of a retrospectively cancelled supplier lose legal sanctity and are not valid documents under Rule 36(1)(a) of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**); that the Board's Instructions treat such credit as inadmissible; and that Section 76 of the CGST Act is no bar to proceedings against a recipient who has wrongly availed ITC. Reliance was placed on *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd. [Civil Appeal No. 230 of 2023 dated March 13, 2023]* and *Aastha Enterprises v. State of Bihar [CWJC No. 10395 of 2023 dated August 18, 2023]*.

The Respondent submitted that the Supplier was a registered person when the goods were purchased, had filed its returns up to March 2019 and reported these invoices (which is why they appeared in FORM GSTR-2A), and that the purchase bills, ledger and bank statement were produced during scrutiny and again in appeal. It argued that a purchaser cannot be made to

suffer for a cancellation ordered later with effect from July 01, 2017 and that denial of credit would amount to taxing the same supply twice.

Issues:

1. Whether ITC availed by a recipient on invoices issued by a supplier who was registered on the dates of the invoices becomes inadmissible solely because the supplier's registration is subsequently cancelled with retrospective effect from a date prior to those invoices?

2. Whether the Revenue can defend the demand in appeal on the ground of non-payment of tax by the supplier under Section 16(2)(c) of the CGST Act, when the show cause notice and the adjudication order rested only on the retrospective cancellation and the Revenue itself admitted that the Supplier had deposited the tax?

Held:

The GSTAT, State Bench Delhi in ***APL/59/DEL/2026*** held as under:

- **Observed that,** Section 16(2)(a) of the CGST Act requires an invoice issued by a supplier registered under the Act; as an invoice is issued on a particular day, the supplier must be registered on that day. The Supplier held a valid registration on all five invoice dates, the invoices carried its GSTIN and the common portal showed it as a registered taxable person.

- **Noted that,** Section 29(2) of the CGST Act empowers the proper officer to cancel registration retrospectively but only fixes, as between the Department and the registrant, the date from which the registration is treated as ended; it does not treat invoices issued in the interim as never issued or make the credit of the buyers lapse, and Section 29(3) keeps the supplier answerable for tax for the period prior to cancellation. The Supplier filed its FORM GSTR-1 for the quarter ending June 2019 on

December 22, 2019, so the cancellation was ordered long after the transactions and without notice to the Respondent.

- **Held that,** Instruction No. 02/2022-GST is only a standard operating procedure for officers scrutinising returns; it cannot add to Section 16 a disqualification which the Section does not contain and it does not bind an authority deciding an appeal. A flag raised in scrutiny is the beginning of an enquiry and not its conclusion. The contention under Rule 36(1)(a) of the CGST Rules was held to be the same contention in another form, as the Supplier was a registered person when it issued the invoices.

- **Noted that,** the invoices appeared in FORM GSTR-2A, the portal showed that the Supplier had filed FORM GSTR-3B for September 2018 and October 2018, and the Revenue's representative admitted at the hearing that the Supplier had deposited the tax. Neither the show cause notice nor the adjudication order alleged non-payment of tax by the Supplier, and under Section 75(7) of the CGST Act a demand cannot be confirmed on a ground other than that specified in the notice. Hence, the condition of Section 16(2)(c) stood satisfied.

- **Held that,** *Ecom Gill* and *Aastha Enterprises* are distinguishable, as the genuineness of the purchases was never put in issue and the Respondent was never called upon to prove receipt of goods, while in the present case the Supplier had paid the tax.

- **Held that,** retrospective cancellation of a supplier's registration does not, by itself, render inadmissible the ITC availed by a recipient on invoices issued while the supplier was registered. It may be a reason for the Department to enquire and, if it has material that the goods or services were not received, that the tax charged was not paid to the Government or that the recipient was party to a fraud, it may issue a notice and the recipient will have to meet it. No such case was made against the Respondent.

- **Directed that,** the Order-in-Appeal dated September 29, 2025 is confirmed; the Respondent is not liable to pay the tax of ₹37,184, the interest or the penalty of ₹10,000; and any amount deposited, including the pre-deposit made for the first appeal, shall be refunded in accordance with law. The GSTAT did not impose costs on the Department but expressed the hope that appeals involving an amount below ₹50,000 will be filed after careful scrutiny.

Hence, the appeal of the Revenue was dismissed.

Our Comments:

Section 16(2) of the CGST Act prescribes the conditions for availing ITC. As it stood in FY 2018-19, a registered person was entitled to credit only if (a) he was in possession of a tax invoice or debit note issued by a supplier registered under the Act, (b) he had received the goods or services, (c) the tax charged had been actually paid to the Government, subject to Section 41, and (d) he had furnished the return under Section 39. Section 29(2) enables the proper officer to cancel a registration from such date, including a retrospective date, as he deems fit, whereas Section 29(3) preserves the liability of the cancelled person for the period prior to cancellation. Rule 36(1)(a) of the CGST Rules read with Section 31 requires an invoice issued by a registered person. Paragraph 7 of Annexure B to Instruction No. 02/2022-GST, which lays down the procedure for scrutiny of returns for FY 2017-18 and FY 2018-19, states that on retrospective cancellation the recipient is not entitled to ITC on invoices issued after the effective date of cancellation. The Revenue also invoked Section 76 (tax collected but not paid to the Government), while the GSTAT applied Section 75(7) (no confirmation of demand on grounds not specified in the notice), Section 155 (burden of proof on the person claiming ITC) and Section 112(2) (power not to entertain appeals where the amount in dispute is below ₹50,000).

The ruling is significant for three reasons. First, the GSTAT tests Section 16(2)(a) on the date of issue of the invoice, so that a later retrospective cancellation does not travel back to invalidate invoices already issued to a buyer who could see only a registered supplier on the portal.

Second, retrospective cancellation is treated as a trigger for enquiry and not as proof of wrongdoing; if the Department suspects non-receipt of goods, non-payment of tax or collusion, that case must be specifically made in the notice and met by the recipient. Third, a CBIC Instruction meant for scrutiny officers cannot enlarge the disqualifications in Section 16. The GSTAT also noted that the Supplier's returns and ledgers lie in the Department's own system, to which the recipient has no access, so the Department cannot rest on doubt about tax payment.

A word of caution is warranted. The order is a Tribunal ruling on its own facts, where the Supplier continued to file returns after the transactions and the Revenue admitted deposit of tax. It does not dilute the condition of Section 16(2)(c) or the burden on the claimant under Section 155. The recipient is therefore best protected where the supplier's tax payment and the genuineness of the supply can be demonstrated with documents.

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Pari Materia Judgments:

- The Hon'ble Madras High Court in *Engineering Tools Corporation v. Assistant Commissioner (ST), Vepery, Chennai [W.P. No. 3505 of 2024 dated February 15, 2024]* held that ITC cannot be rejected solely because the supplier's registration was cancelled retrospectively and directed the authority to examine the genuineness of the supply on the basis of invoices, e-way bills, lorry receipts and proof of payment.

- The Hon'ble Madras High Court in *Fathima Traders v. Deputy Commercial Tax Officer [W.P. Nos. 22419, 22420 & 22422 of 2023 dated June 12, 2026]* quashed the orders denying ITC solely on the ground that the supplier's registration was cancelled retrospectively from July 01, 2017, as the cancellation was actually ordered on December 06, 2022 and most of the transactions preceded it, and remanded the matter for fresh adjudication.

- The Hon'ble Calcutta High Court in *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax [MAT No. 1218 of 2023 dated August 02, 2023]* held that a demand cannot be raised on a bona fide recipient for the supplier's default without first proceeding against the defaulting supplier. The SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court.

- The Hon'ble Calcutta High Court in *LGW Industries Ltd. v. Union of India [W.P.A. No. 23512 of 2019 dated December 13, 2021]* held that bona fide purchasers who transacted with registered suppliers before the cancellation of their registration cannot be denied ITC merely on the ground of subsequent retrospective cancellation, provided the genuineness of the transactions is established.

- The Hon'ble Calcutta High Court in *Gargo Traders v. Joint Commissioner, Commercial Taxes (State Tax) [W.P.A. No. 1009 of 2022 dated June 12, 2023]* held that ITC cannot be refused where the purchases are genuine, supported by valid documents and made before the cancellation of the supplier's registration.

- The Hon'ble Madras High Court in *D.Y. Beathel Enterprises v. State Tax Officer [W.P. (MD) No. 2127 of 2021 dated February 24, 2021]* quashed the order denying ITC to the recipient and held that the Department ought to first proceed against the defaulting supplier.

- The Hon'ble Delhi High Court in *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [W.P.(C) No. 6093 of 2017 dated October 26, 2017]*, in the context of the pari materia Delhi VAT law, held that a bona fide purchaser cannot be denied credit because the selling dealer failed to deposit the tax. The SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court.

- The Hon'ble Allahabad High Court in *Safecon Lifescience Pvt. Ltd. v. Additional Commissioner Grade 2 [Writ Tax No. 389 of 2023 dated September 09, 2025]* held that

proceedings under Section 74 cannot be initiated to deny ITC to a bona fide purchaser merely because the supplier's registration was subsequently cancelled, where genuineness of the transaction is established and no fraud, wilful misstatement or suppression is found. The Hon'ble Supreme Court dismissed the Revenue's SLP at the admission stage in *Additional Commissioner Grade 2 v. Safecon Lifescience Pvt. Ltd. [SLP (C) No. 23993 of 2026 dated July 17, 2026]*, which, being a dismissal without a reasoned order, does not lay down the law but leaves the High Court ruling undisturbed.

Contrary and Cautionary Judgments:

- The Hon'ble Supreme Court in *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd. [Civil Appeal No. 230 of 2023 dated March 13, 2023]* held that the burden of proving the genuineness of the transaction and the movement of goods lies on the purchasing dealer, and that production of invoices and proof of payment alone is not enough where the genuineness of the purchase is in question.

- The Hon'ble Patna High Court in *Aastha Enterprises v. State of Bihar [CWJC No. 10395 of 2023 dated August 18, 2023]* denied ITC to a purchasing dealer where the selling dealer had collected the tax but not deposited it with the Government, holding that invoices, proof of receipt of goods and payment through bank are not sufficient by themselves.

- The Hon'ble Supreme Court in *Bhandari Scrap Traders v. Union of India [SLP (C) No. 23931 of 2026 dated July 24, 2026]* dismissed the Special Leave Petitions and affirmed the judgment of the Hon'ble Gujarat High Court in *Maruti Enterprise v. Union of India [R/Special Civil Application No. 18080 of 2023 dated May 01, 2026]*, which upheld the constitutional validity of Section 16(2)(c) of the CGST Act, declined to read it down and held that ITC is not available to the recipient unless the supplier has actually paid the tax to the Government.

Reading these decisions together, the line of authority is consistent: retrospective cancellation of the supplier's registration, standing alone, is not a ground to deny ITC, but the recipient remains exposed where the supplier has not actually paid the tax or the genuineness of the supply is doubted. In the present case the GSTAT could rule for the Respondent because payment of tax by the Supplier was shown and admitted. Taxpayers facing such notices should (i) obtain the supplier's registration status history and the portal extract showing its FORM GSTR-1 and FORM GSTR-3B filings for the relevant periods, (ii) keep invoices, e-way bills, transport records, ledger and bank payment proof ready, (iii) check that the invoices appear in FORM GSTR-2A or FORM GSTR-2B, and (iv) insist that the notice itself states a specific allegation of non-receipt, non-payment or fraud, failing which the demand is open to challenge on the very ground adopted by the GSTAT.

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