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Supreme Court Decision
Bhandari Scrap Traders

Bhandari Scrap Traders vs Union of India Order No. [(2026) 44 Centax 356 (S. C.)] dt 24.07.2026

- The Gujarat High Court in Maruti Enterprise v. Union of India upheld the constitutional validity of Section 16(2)(c) CGST Act

- The Supreme Court, while dismissing the connected special leave petitions in Bhandari Scrap Traders v. Union of India expressed complete agreement with the High Court and affirmed its judgment.

- The petitioners contended that ITC should not be denied merely because the supplier failed to discharge GST to the Government, particularly when the recipient has no practical mechanism to verify such payment despite having fulfilled all statutory obligations.

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- Reliance was placed on Articles 14, 19(1)(g), 265 and 300A of the Constitution, and on the Delhi High Court's ruling under Delhi VAT Act, which had protected bona fide purchasers from denial of credit due to seller default.

- The Court distinguished Delhi VAT Act from the CGST Act and held that the principles under VAT regime cannot be imported into the GST regime.

- Further, Section 41(2) read with Rule 37A permits a purchasing dealer to re-avail ITC once the defaulting supplier pays the tax. This mechanism safeguarded revenue while still preserving a remedy for the recipient.

- Thus hon’ble SC affirmed the judgment of Gujarat HC and dismissed the SLP, thereby upholding the constitutional validity of Section 16(2)(c).

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Our Comments:

- The constitutional validity of Section 16(2)(c) now stands settled by the Apex Court i.e. ITC denial for supplier default is not unconstitutional.

- Accordingly, ITC may be denied even to a bona fide recipient who has undertaken all reasonable due diligence if the supplier has failed to validly discharge GST liability. This becomes particularly harsh where the supplier has filed GSTR-3B but has fraudulently utilized fake/ineligible ITC to discharge tax, as the recipient has no mechanism to verify such default

- The law does provide a right to re-avail reversed ITC under Section 41(2) read with Rule 37A once tax is recovered from defaulting supplier.

- However, no statutory mechanism presently exists to inform the recipient that such payment has been made or recovery has been effected by the department.

- Further, where only a portion of the supplier's liability is recovered by the department, neither the Act nor the Rules clarify the extent of ITC that may be re-availed by recipients.

- Furthermore, even where ITC is eventually restored, the recipient will typically have already reversed ITC with interest and penalty. The current framework does not address the issue of interest and penalty cost once the supplier's default is later made good.

Suggested Actions Points for Taxpayers:

- Undertake periodic reconciliation of ITC with GSTR-2B. However, taxpayers should note that mere reflection of an invoice in GSTR-2B does not establish that the supplier has actually discharged the corresponding GST liability to the Government.

- Verify the return filing status of vendors through the Search Taxpayer functionality on the GST Portal. Non-filing of Form GSTR-3B by a supplier is a strong indicator that the corresponding GST liability may not have been discharged.

- After logging into the GST Portal, taxpayers can access the 'Search Taxpayer' functionality to review the percentage of GST liability discharged by a supplier. Where the supplier has not discharged 100% of the reported GST liability, the recipient should undertake further due diligence before relying on the corresponding ITC.

- Obtain annual CA certificates from all vendors confirming that GST collected has in fact been deposited with the Government.

- Where a specific supplier is known to be in default, consider filing an RTI application to ascertain the status of recovery action initiated by the department.

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