

EY Tax Alert

Andhra Pradesh HC upholds the validity of time limit prescribed for claiming ITC under GST

Executive summary

This Tax Alert summarizes a recent ruling of the Andhra Pradesh High Court (HC)¹ upholding the validity of time limit for claiming input tax credit (ITC) prescribed under Section 16(4) of the Central Goods and Services Tax Act, 2017 (CGST Act).

Assessee in the given case commenced its business in March 2020 and filed GSTR-3B for the said month on 27 November 2020 along with late filing fees. Revenue disallowed ITC claimed in the said return since the same was filed beyond the statutory time limit for claiming ITC prescribed under Section 16(4).

Aggrieved, assessee filed a writ petition before the HC challenging Constitutional validity of the said provision and also contending that the non-obstante clause in Section 16(2) would prevail over Section 16(4).

HC dismissed the writ petition and concluded that:

- ▶ ITC is not a statutory or constitutional right but a mere concession/rebate and therefore, imposing time limitation for availing the said concession will not amount to violation of Constitution or any statute.
- ▶ Overriding effect cannot be given over other provisions unless a clear inconsistency is established. In the present case, both Section 16(2) and Section 16(4) are two different restricting provisions having no inconsistency between them.
- ▶ Collection of late fees is only for the purpose of admitting the returns for verification. Mere acceptance of GSTR-3B return with late fee will not exonerate the delay in claiming ITC beyond the period specified under Section 16(4).

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¹ TS-349-HC(AP)-2023-GST

Background

- ▶ Assessee is a sole proprietor engaged in the business of hardware and plywood. He obtained voluntary registration under Goods and Services Tax (GST) in March 2020.
- ▶ In view of the COVID-19 pandemic, the time limit to file GSTR-3B for the month of March 2020 was extended to 30 June 2020. However, assessee filed the said return only on 27 November 2020 and claimed input tax credit (ITC) pertaining to such period.
- ▶ As per Section 16(4) of Central Goods and Services Tax Act, 2017 (CGST Act), as it stood then, ITC pertaining to March 2020 could be claimed by the due date of filing GSTR-3B for the month of September 2020, i.e., 20 October 2020.
- ▶ Accordingly, assessee was served with show cause notice under Section 74(1) to disallow ITC claimed beyond the statutory time limit, against which, assessee furnished its reply.
- ▶ Revenue rejected the reply furnished by assessee and passed an order confirming the disallowance of ITC claim for the said period along with interest and penalty.
- ▶ Aggrieved, assessee filed a writ petition before the Andhra Pradesh High Court (HC) challenging the constitutional validity of statutory time limit to claim ITC.

Assessee's contentions

- ▶ Being new to the business which was started in the wake of COVID-19 pandemic, return for the month of March 2020 could only be filed on 27 November 2020 along with a late fee of INR 10,000.
- ▶ As the return for said period was accepted with late fee, it shall be deemed that the Revenue has exonerated the delay for claiming ITC beyond the statutory time limit prescribed under Section 16(4).
- ▶ ITC is a statutory right which an assessee is entitled to claim and placing stumbling blocks by way of imposing time limit for claiming such right tantamount to violation of Article 14, 19(1)(g) and 300A of the Constitution of India.
- ▶ Section 16(2) commences with a non-obstante clause and will override Section 16(4), meaning thereby, if the conditions mentioned in Section 16(2) are complied with by assessee, he will be entitled to claim ITC without reference to the time limit prescribed under Section 16(4).

Revenue's contentions

- ▶ The collection of late fees is exclusively relating to the issue of belated filing of return. The same can never be an immune for other aspects such as output tax payment, demand for interest on belated payment as well as claiming ITC beyond the stipulated time period.
- ▶ ITC is no more than a statutory rebate, or a mere concession given to a taxpayer as has been reverberated in a slew of judgments². The legislature in its wisdom has imposed certain conditions including prescription of time limit under Section 16(4) of the CGST Act.
- ▶ Assuming ITC is a legal right, the legislature still has a right to impose time limit for claiming the same as has been done through Indian Limitation Act, 1863, where time limit is prescribed even against statutory right of filing appeal.

If there is no time limitation, one would go on claiming ITC after indefinite period.

- ▶ The operative sphere of Article 14 and 19(1)(g) of the Constitution is quite distinct from that of Section 16(4) and therefore, even in the wildest imagination one cannot authoritatively claim the latter has infringed the former.

HC ruling

- ▶ Section 16 prescribes the eligibility conditions for an assessee to claim ITC. While Section 16(2) prescribes the eligibility criteria which is *sine qua non* for claiming ITC, sub-section (3) and (4) impose conditions or limitations for claiming the same.

In other words, even if an assessee passes basic eligibility criteria imposed under Section 16(2), still he will not be entitled to claim ITC if his case falls within the limitations prescribed under sub-sections (3) and (4).

- ▶ The general purpose of a non obstante clause has been explained in a plethora of decisions³ which expounds that the same is a legislative device usually employed in a statute to give overriding effect to certain provisions.
- ▶ Section 16(2) does not appear to be a provision which allows ITC, rather ITC enabling provision is Section 16(1). Section 16(2) restricts the credit, which is otherwise allowed, to only such cases where conditions prescribed in it are satisfied.
- ▶ Therefore, Section 16(2) only overrides the ITC enabling provision i.e., Section 16(1). This is evident from the manner in which the said provision is couched.

² 2016 (15) SCC 125; 2013(5) CTC 63; (2019) 13 SCC 225

³ [1984] (Supp) SCR 196; AIR 1987 SC 117; AIR 1992 SC 81; AIR 1980 SC 2147; (1998) 4 SCC 231; (1971) 1 SCC 85; (2006) 10 SCC 452; (2009) 4 SCC 94

- ▶ Overriding effect cannot be given over other provisions unless a clear inconsistency is established. In the present case, both Section 16(2) and Section 16(4) are two different restricting provisions having no inconsistency between them.
- ▶ Mere filing of the return with a delay fee will not act as a springboard for claiming ITC. Collection of late fees is only for the purpose of admitting the returns for verification.
- ▶ Assessee's argument that Section 16(4) violates Article 14, 19(1)(g) and 300-A of the Constitution has no vitality as ITC is not a statutory or constitutional right but a mere concession/ rebate and therefore, imposing time limitation for availing the said concession will not amount to violation of Constitution or any statute.
- ▶ Accordingly, HC dismissed the writ petition by concluding as under:
 - ▶ The time limit prescribed for claiming ITC under Section 16(4) of the Act is not violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.
 - ▶ Section 16(2) of the CGST Act has no overriding effect on Section 16(4) as both are not contradictory with each other and operate independently.
 - ▶ Mere acceptance of GSTR-3B return with late fee will not exonerate the delay in claiming ITC beyond the period specified under Section 16(4).

Comments

- a. This ruling may negatively impact the taxpayers who have claimed ITC in the returns filed beyond the time limit prescribed under Section 16(4). At present, divergent views prevail in the industry on interpretation of the said timelines regarding ITC eligibility.
- b. It appears from the facts in the given case that the invocation of Section 74, which deals with issuance of SCN due to fraud, misrepresentation, etc., has not been challenged. Businesses may contest applicability of the said provision in absence of any *mala fide* intention.
- c. HC has re-iterated the principle that ITC is not a constitutional right, but a concession given under a statute. Hence, legislature has the power to impose restrictions on availing the same.

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