

No.	Description	Contents
1	Appellant	GST Department Application
2	Case No.	Interlocutory Application
3	Date of Judgement	15.01.2025
4	Court	Supreme Court of India
5	Subject Matter	Buyers ITC cannot be denied due to nonpayment of tax by supplier

Facts of the Case:

- The case deals with an issue in Goods and Services Tax (GST) matters, where genuine purchasers who paid GST face problems due to suppliers issuing fictitious bills to evade GST payments to the government.
- The purchasers have genuinely made purchases and paid for the materials, including GST. However, the suppliers involved in the transactions have incorrect or fraudulent GST registrations, leading to complications for the purchasers.

Appellant's Contention (GST Department):

- The GST department raised the issue that some suppliers are fraudulently issuing invoices under incorrect or fictitious GST registrations, thereby evading GST payment to the government.
- The department's goal was to address this problem, though they suggested a system where suppliers and GST input providers could be linked online for better tracking of GST transactions.

Respondent's Contention (Purchasers/Taxpayers):

- The purchasers argued that they had made genuine purchases, paid the required amounts, and followed the necessary procedures, including paying GST. They should not be held liable for the incorrect or fraudulent GST registration of their suppliers.
- The purchasers highlighted that the materials were legitimately procured, and the payments were made, but they had no control over the GST registration of the suppliers.

Court's Observations and Order:

- The Supreme Court, led by Chief Justice of India Sanjiv Khanna, raised concerns about holding purchasers responsible for suppliers' fraudulent activities.
- The Court emphasized that it is the responsibility of the GST department to ensure due diligence regarding the validity of GST registrations and bills issued by suppliers. The department must take steps to resolve such issues.

- CJI Khanna noted that even if an online system is implemented to link suppliers and input providers, it may not fully solve the issue because problems of incorrect GST registration could persist.
- The Court cautioned the GST department about the recurring nature of this issue and hinted that strict action would be taken if necessary.
- Ultimately, the Court allowed the GST department to withdraw its interim application and directed them to address the issue properly.

Conclusion:

The Court emphasized the need for the GST department to carry out due diligence and resolve the issue of fictitious bills and incorrect GST registrations. The department was given time to rectify the system but was warned that the issue would be closely scrutinized in the future.

[2022] 140 taxmann.com 149 (Article)

No recovery from buyer when ITC claimed based on tax invoice

(Part II of 'No recovery based on GSTR 2A information') Tax Invoice is an essential document for claim of ITC by the recipient/buyer under GST law. No recovery of tax can be made from the recipient under GST law by ignoring the tax invoice, when the tax was collected by the suppliers from the recipient.

Section 16(2): Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

Proviso to Section 16(2): Provided also that *"the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."*

Section 33: Amount of tax to be indicated in tax invoice and other documents :: Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, *every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.*

Section 41: Claim of input tax credit and provisional acceptance thereof:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

So since the tax invoice is only the proof of tax paid documents in the hands of buyer/recipient, the claim of Input tax credit based on that tax invoice cannot be denied. And as per Sec 33 the amount of tax, which shall form part of the price, shall prominently indicate in that tax invoice issued by the seller/supplier. And every registered person be entitled to take the credit of eligible input tax under Sec 41 of GST Act based on tax invoice.

The same opinion was supported by Hon'ble High Courts and Supreme court, **The Hon'ble High Court of Gujarat** in the case of **New Nalbandh Traders v. State of Gujarat [2022]** 136 taxmann.com 284 adjudged that-"Before we close this judgment, we must observe something as regards Section 43A of the Act, 2018. Section 43A was inserted into the Act vide the CGST (Amendment)

Act, 2018. Section 43A(6) provides that the supplier and the recipient of a supply shall be jointly and severally liable to pay tax, or to pay the input tax credit availed, as the case may be, in relation to the outward supplies. ***However, section 43A has not been notified yet. Therefore, the same does not apply.*** In the absence of section 43A being notified, this power has not been contemplated by the Act.

However, the ITC reversal mechanism, as laid down in section 41 read with rules, is kept in abeyance. The facility to furnish GSTR - 2 and GSTR - 3 Forms is also not available. Accordingly, ***there is no system-based matching of the ITC being carried out presently, and till the time such provisions are given effect, the recipients shall be eligible to claim ITC provisionally on the basis of the invoice issued by customer.***"

And In another case the **Hon'ble Calcutta High Court** in the case of **Sanchita Kundu v. The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal W.P.A. 7231 of 2022**. Dated 05.05.2022 observed and adjudged that-"entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of the transactions in question and ***the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents*** and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration as to whether facts of the petitioners are similar to the judgments of the Supreme Court and various High Courts and of this Court upon which petitioners intend to rely and if it is found similar to the present case in that event the petitioners shall be given the benefit of input tax credit in question."

The Hon'ble **Supreme Court of India** has also specifically held that the Input Tax Credit should be allowed based on tax invoice in the case of **State of Maharashtra v. Suresh Trading Co. 1998 taxmann.com 1747** as follows – "The Respondents who were registered dealers had purchased goods from a registered dealer **who had issued invoices** containing a certificate that the registration of the selling dealer was in force on the date of the sale. The Respondents upon reselling the goods, claimed to deduct from their turnover of sales, the resale of the goods which had been purchased by them. The Assessing Officer disallowed the claim on the ground that the registration of

the dealer from whom the Respondents had purchased goods had been cancelled with retrospective effect. *Court held that the purchasing dealer was entitled in law to rely upon the certificate of registration of the selling dealer and the retrospective cancellation of the registration certificate of the selling dealer would have no effect upon any person who had acted upon the strength of a registration certificate.*"

WHICH IS THE CORRECT DATE FOR SYSTEM BASED ITC ::

A new clause (aa) was inserted in Sec 16(2) by Finance Act 2021, through a Notification 39/2021 Dt. 21/12/2021 with effect from 01-01-2022.

Sec 16 (2) (aa)- *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.*

And also an amendment in Rule 36(4) of CGST- by **Notification No. 40/2021 – (C T) Dt 29thDecember, 2021(effective from 01-01-2022) –**

2. In the Central Goods and Services Tax Rules, 2017 - (i) in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely:-

(4) *No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub- section (1) of section 37 unless-*

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule60.

Therefore, one may come to a conclusion that the claim of ITC based on auto populated information specified under rule 36(4) and rule 60(7) is effective from 01-01-2022 only. Hence a recipient/buyer can take the Input Tax Credit till 01-01-2022 based on tax Invoice issued by the supplier/seller.

Opinion:

The claim of ITC based on tax invoice was totally removed by **Notification No. 40/2021 – (C T) Dt 29/12/2021 with effect from 01-01-2022.** So, any

demand and recovery from the buyer/recipient based on difference in between GSTR 2A/2B and GSTR 3B may not be enforceable till 01-01-2022 under GST Law.

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