SUPREME COURT UPHOLDS THE CONSTITUTIONAL VALIDITY OF SECTION 16(2)(c) OF CGST ACT 2017, REJECTS BONAFIDE PURCHASE PROTECTION

In a landmark ruling, the Hon'ble Supreme Court of India in Bhandari Scrap Traders v. Union of India & Ors. [SLP (C) No. 23931 of 2026 dated July 24, 2026] has affirmed and upheld the decision of the High Court of Gujarat. Hon'ble Apex Court held that Section 16(2)(c) of the Central Goods and Services Tax (CGST) Act, 2017—which conditions the availment of Input Tax Credit (ITC) on the supplier actually paying the tax to the Government-is constitutional and cannot be read down to protect even bona fide purchasers.

SUPREME COURT'S KEY OBSERVATIONS

DISTINGUISHED VAT PRECEDENCES – HELD NO PARITY BETWEEN PROVISIONS OF ITC UNDER DELHI VAT ACT AND GST LAW

HELD THAT GST REGIME CONTAINS A DISTINCT STATUTORY MECHANISM GOVERNING AVAILMENT AND REVERSAL OF ITC – SECTION 41

STATUTORY MECHANISM ENABLES PURCHASING DEALER TO RE-AVAIL REVERSED INPUT TAX CREDIT AFTER THE SUPPLIER DISCHARGES THE OUTSTANDING TAX LIABILITY

HOLDS COMPLETE AND RESPECTFUL AGREEMENT WITH THE VIEWS EXPRESSED BY THE GUJARAT HIGH COURT

FACTS OF THE CASE

M/s Bhandari Scrap Traders and other appellants purchased goods from registered suppliers, obtained valid tax invoices, made payments through banking channels, and claimed Input Tax Credit (ITC) on their GST returns.

However, the suppliers failed to deposit the collected GST with the government (i.e., did not file GSTR-3B or remit tax). Revenue authorities issued notices under Section 73/74 demanding reversal of ITC claimed by the buyers.

The buyers challenged these demands arguing they were bona fide purchasers who had fulfilled all obligations on their part — valid invoices, actual receipt of goods, and payment through legitimate banking channels.

ISSUES BEFORE THE COURT

1. Whether ITC can be denied to a bona fide buyer solely because the supplier failed to deposit tax with the government?
2. Whether the buyer's right to ITC is an absolute right or a conditional statutory concession?
3. Whether precedents from VAT regime (protecting bona fide buyers) apply under the GST framework?

SUPREME COURT'S KEY FINDINGS

1 ITC IS A STATUTORY CONCESSION, NOT A RIGHT

The Court held that Input Tax Credit is not a vested or indefeasible right of the buyer. It is a conditional statutory concession that can only be availed when ALL conditions under Section 16(2) are fulfilled — including the requirement that tax has actually been deposited by the supplier.

2 SECTION 16(2)(c) IS MANDATORY & ABSOLUTE

The provision requiring that tax has been 'actually paid to the Government' is not directory but mandatory. No ITC can be claimed unless the supplier has discharged their liability by filing GSTR-3B and depositing the tax collected.

3 BONA FIDE INTENT OFFERS NO PROTECTION

The Court explicitly rejected the argument that a buyer who has paid the supplier (including GST component) and holds valid invoices should be entitled to ITC. The statutory scheme places the risk of supplier default squarely on the buyer.

4 VAT-ERA PRECEDENTS DO NOT APPLY

Previous Supreme Court/High Court decisions under the VAT regime that protected bona fide purchasers were expressly distinguished. The GST framework creates a distinct self-contained code with different conditions.

BUSINESS IMPACT ANALYSIS

₹ FINANCIAL EXPOSURE

Businesses face immediate reversal of ITC already claimed, along with interest liability under Section 50 (18% p.a.) from the date of wrong availment. For large procurement volumes, this can run into crores.

CASH FLOW & WORKING CAPITAL

ITC reversals directly impact working capital. Companies must now budget for potential ITC losses as a cost of doing business, fundamentally altering procurement economics and pricing strategies.

VENDOR MANAGEMENT OVERHAUL

Organizations must implement robust vendor due diligence — verifying GSTR-3B filing status, monitoring tax deposits, and building compliance checkpoints into procurement workflows.

LITIGATION & COMPLIANCE BURDEN

Pending cases across High Courts will now be decided against buyers. New show-cause notices are expected. Companies need to reassess their litigation strategy and provision for potential liabilities.

RECOMMENDED ACTION POINTS

1 IMMEDIATE VENDOR AUDIT

Review all existing suppliers' GSTR-3B filing status for the past 12-24 months. Identify vendors with irregular filing patterns and quantify ITC exposure linked to non-compliant suppliers.

2 STRENGTHEN PROCUREMENT PROTOCOLS

Implement mandatory GST compliance checks before onboarding new vendors. Include GSTR-3B verification as a pre-condition for purchase orders and periodic compliance reviews in vendor contracts.

3 RECONCILIATION & MONITORING SYSTEM

Deploy automated GSTR-2B reconciliation tools to track whether suppliers are depositing collected tax. Set up real-time alerts for mismatches between ITC claimed and supplier filings.

4 CONTRACTUAL SAFEGUARDS

Insert indemnity clauses in vendor agreements requiring suppliers to compensate buyers for ITC loss due to non-filing. Consider performance guarantees or retention mechanisms.

5 RE-ASSESS PENDING LITIGATION

Review all ongoing ITC disputes in light of this judgment. Evaluate settlement options where applicable and make adequate financial provisions for potential adverse outcomes.

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