

# **GST-ITC: Time barring period for claiming & Reclaiming - Impact of AP High Court decision in THIRUMALAKONDA PLYWOODS Vs THE ASSISTANT COMMISSIONER(2023-VIL-472-AP) dated 18th July 2023**

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The video relating to this article can be accessed at: <https://youtu.be/RZC0cpNfsbE>

The Big question under GST since very inception are –

1. GST-ITC Taken after Return period of 30<sup>th</sup> September / 30<sup>th</sup> November of the next year, whether valid?
2. GST-ITC Taken before the Return period of 30<sup>th</sup> September / 30<sup>th</sup> November of the next year and thereafter temporarily reversed – then reclaimed - whether valid?

The Hon'ble Andhra Pradesh High Court in a judgement in the case of THIRUMALAKONDA PLYWOODS Vs THE ASSISTANT COMMISSIONER(2023-VIL-472-AP) dated 18<sup>th</sup> July 2023, has answered the first question supra. From Trade & Industry's perspective we try to understand the in simple terms. Also we try to understand the answer to the second question supra in this article.

## **GST-ITC Taken after Return period of 30th September / 30th November of the next year, whether valid? – Petitioner's Contention**

Put simply, the following were the petitioner's contentions in the case supra -

1. Input Tax Credit is a "statutory right" which an assessee is entitled to claim. Placing stumbling blocks by way of imposing time limit under Section 16(4) of the APGST / CGST Act,

2017 from claiming such right tantamount to violation of Article 14, 19(1)(g) and 300A of the Constitution of India.

2. Section 16(2) of CGST Act, 2017 which commences with a "non-obstantee" clause will override Section 16(4) of the said Act, meaning thereby, if the conditions mentioned in Section 16(2) are complied with by an assessee, he will be entitled to claim ITC without reference to the time limit prescribed under Section 16(4).

3. Once Department permits the petitioner to file return with late fee, the petitioner cannot be deprived of the right of ITC on the sole ground that claim was made beyond the period prescribed under Section 16(4)

**However, the Department's contentions were as follows –**

1. ITC is no more than a statutory rebate or a mere concession given to a GST taxpayer as has been reverberated in a slew of judgments -

- Jayam and co. v. Assistant Commissioner [2016 (15) SCC 125 = [MANU/SC/0956/2016] - 2016- VIL-45-SC],
- USA Agencies v. The Commercial Tax Officer [2013 (5) CTC 63 - 2013-VIL-55-MAD],
- ALD Automotive Private Limited v. Commercial Tax Officer [(2019) 13 SCC 225 - 2018-VIL-28-SC].

2. Since the ITC is only a concession or rebate, the legislature in its wisdom has imposed certain conditions including prescription of time limit under Section 16(2) and (4) of the CGST Act, 2017 which shall be fulfilled by the taxpayer before laying a claim for refund of ITC.

Therefore, neither the conditions mentioned in Section 16(2) nor the time limit in Section 16(4) can be attributed to be illegal or unconstitutional.

3. Assuming ITC as a legal right, still the legislature has a right to impose time limit for claiming such right as has been done through Indian Limitation Act, 1863 whereunder, even

against the statutory right of filing appeal, time prescription was made and therefore, ITC claim which even if placed on the pedestal of a legal right, still cannot claim exemption. To buttress the said argument, he placed reliance on Willowood Chemicals Pvt Ltd. V. Union of India [2018 SCC OnLine Guj 4833 - 2018-VIL-433-GUJ]

4. Article 14 was applicable against the petitioner as taxpayers (who filed returns within due date) should be put on same pedestal as the petitioner

5. Penalty or Late Fees for late filing of return does not entitle the taxpayer with a condonation of other irregularities

**Hearing out both, the petitioner and respondent, the Hon'ble Court's views were as follows-**

1. The cardinal principle of interpretation was laid down In Reserve Bank of India v. Peerless General Finance and Investment Co Ltd [AIR 1987 SC 1023 = MANU/SC/0073/1987] the Apex Court observed thus -

*Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context.*

*No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.*

2. while Section 16 sub-section (2) prescribes the eligibility criteria which is sine qua non for claiming ITC, subsection (3) and (4) impose conditions or limitation for claiming ITC. 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).

3. No doubt Section 16 (2) starts with a non obstante clause as "Notwithstanding anything contained in this Section", but it is notwithstanding Sec 16(1) as Sec 16(1) is conflicting with 16(2)

4. Section 16(3) and Section 16(4) are independent and non-contradictory to Sec 16(2). Hence 'notwithstanding' clause in Sec 16(2) is not used w.r.t. Section 16(3) and Section 16(4).

5. Mere filing of the return with a delay fee will not act as a springboard for claiming ITC.

Therefore the Hon'ble High Court has upheld the vires of Section 16(4) of The CGST Act 2017.

**Now to answer the second question supra – Whether it is valid that GST-ITC is taken before the Return period of 30th September / 30th November of the next year and thereafter temporarily reversed and then reclaimed.** This me to draw your attention to 2nd provisio to Rule 37A of CGST Rules which was notified from December 2022 and which states as follows –

*"Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter."*

Hence, in our view, the 2<sup>nd</sup> Provisio to Rule 37A clarifies that reclamation of ITC has no time limit by not providing any restriction in the matter. Therefore, GST-ITC taken before the Return period of 30th September / 30th November of the next year and thereafter temporarily reversed can be reclaimed without any time barring period. Same position can be taken incase of reversal due to delayed payment and reclamation thereafter in terms of 2<sup>nd</sup> provisio to Section 16(2) of CGST Act 2017 and other such cases.

**BRIEF ABOUT THE AUTHOR:**

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He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute Of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

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His Books include the following –

- COMMENTARY ON UNION BUDGET 2023 – February 2023
- HOW TO HANDLE GST LITIGATION– September 2022
- HANDBOOK ON GST– June 2022
- GST PLEADING & PRACTISE – August 2021 – **India's Bestseller**
- UNION BUDGET 2021 – February 2021
- SECTIONWISE COMPENDIUM ON GST – October 2020
- INTEGRATED APPROACH TO E-INVOICING E-WAYBILL & RETURN FILING – October 2020
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- **SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018**
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

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