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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Indirect Tax		
The Commissioner Trade and Tax, Delhi vs M/s Shanti Kiran India Pvt Ltd [Civil Appeal No.9902 of 2017, decided on 09-10-2025]	Can ITC be denied to a bona fide purchaser if the selling dealer fails to deposit tax with the Government?	The Supreme Court upheld the Delhi High Court's view that bona fide purchasing dealers who paid tax in good faith to registered sellers cannot be denied ITC merely because the sellers failed to deposit the tax. The Court noted no evidence of collusion or fake transactions. Accordingly, the appeal filed by the Department was dismissed.
Priya Holdings Pvt Ltd [Order No.GUJ/GAAR/R/2025/34]	Whether ITC of IGST paid on Imports of Goods, where payment to the foreign supplier is deferred beyond 180 days (but within FEMA/RBI limits), remains admissible or needs to be reversed under the second proviso to section 16(2) of the CGST Act read with rule 37 of CGST Rules?	The Input Tax Credit (ITC) of Integrated GST (IGST) paid on the import of goods, where payment to the foreign supplier is deferred beyond 180 days from the date of invoice but made within the time limits permitted under FEMA and RBI guidelines, remains admissible under Section 16 of the CGST Act, 2017, and is not required to be reversed as per the second proviso to Section 16(2) read with Rule 37 of the CGST Rules, 2017.

The brief analysis of above referred decisions and rulings are given below.

INDIRECT TAX

The Commissioner Trade and Tax, Delhi vs M/s Shanti Kiran India Pvt Ltd [Civil Appeal No. 9902 of 2017, decided on 09 October 2025]

Facts in brief & Issue Involved

- ♦ M/s Shanti Kiran India Pvt. Ltd. the respondent (purchasing dealer) had purchased goods from registered dealers and paid VAT as per invoices issued by such sellers.
- ♦ Subsequently, it was found that the selling dealer failed to deposit the tax collected from the purchaser (M/s Shanti Kiran India Pvt. Ltd.) with the Government.
- ♦ The Delhi High Court held that the respondent was bona fide purchaser who paid tax in good faith and, therefore, were entitled to claim Input Tax Credit (ITC).
- ♦ Aggrieved by this, the Department (petitioner) filed an appeal before the Supreme Court.

Contentions of Petitioners

- ♦ The Petitioner argued that under Section 9(2)(g) of the Delhi Value Added Tax Act, 2004, ITC can be claimed by a purchasing dealer only when the selling dealer has deposited the tax with the Government.
- ♦ Since the selling dealers failed to deposit the tax, the purchasers were not entitled to ITC.

Contentions of Respondents

- ♦ The respondent contended that they had purchased goods from registered sellers, paid the tax component in good faith, and received valid tax invoices as required by law.
- ♦ The failure of the seller to deposit tax cannot prejudice the bona fide purchaser.

Observations & Decision of the Hon'ble Supreme Court

- ♦ The Hon'ble Supreme Court observed that the Hon'ble Delhi High Court in the case *On Quest Merchandising* had "read down" the provision of section 9(2)(g) to protect bona fide purchasers thereby directing the Department to proceed against the defaulting selling dealer and held the provision violative of Article 14 of the Constitution. The Supreme Court later disposed of the SLP in the matter in the case of *On Quest Merchandising*.
- ♦ Since the selling dealers were registered at the time of transactions and there was no evidence of collusion or fake invoicing, the purchasers acted in good faith.
- ♦ The Hon'ble Supreme Court found no reason to interfere with the Delhi High Court's order granting ITC after due verification. Accordingly, the Appeal was dismissed.

NASA Comments

- ♦ This judgment strengthens the ITC claim of bona fide taxpayers and prevents penalizing genuine transactions due to the default of selling dealer. Though the judgment pertains to the VAT regime, it would hold persuasive value in the GST regime for ITC demands on account of selling dealer's default.

Facts in brief & Issue Involved

- ♦ Priya holdings Pvt.Ltd. (Applicant), is engaged in trading of ferrous and non-ferrous metal scrap. It was previously engaged in ship-breaking operations also exploring re-entry into ship-breaking sector. The company also regularly imports goods and pays IGST at customs clearance and claiming ITC thereafter.
- ♦ Applicant has sought a ruling on the applicability of the second proviso to Section 16(2) of the CGST Act and Rule 37 of the CGST Rules in case of payment to foreign suppliers beyond 180 days but within the time limits prescribed under FEMA regulations.

Contentions of Petitioners

- ♦ Payment beyond 180 days is legally valid under FEMA and RBI guidelines.
- ♦ The foreign supplier does not levy and collect GST, so the payment delay doesn't affect ITC claim as only the value of goods is payable to the foreign supplier excluding the IGST amount.
- ♦ Bill of Entry (and not the Commercial invoice) is the eligible document for ITC claim as per Rule 36(1)(d) of CGST Rules.
- ♦ Section 16(2) proviso excludes RCM transactions; thereby a similar analogy should be applied to import of goods which is conceptually similar since the importer directly pays IGST on imports directly to the Government through customs (ICEGATE).
- ♦ The Legislative intent behind the 180 days condition discussed in the 6th GST Council meeting is an anti-evasion measure and does not cover import transactions.

Contentions of Respondents

- ♦ The Department argued that there is no distinction in law between domestic and import transactions regarding payment timelines.
- ♦ Section 16(2) read with Rule 37 of CGST Rules is applicable on import transactions and the distinction as pointed out by the Applicant is bad in law and outside the purview of statutory provisions

Observations & Decision of the Gujarat Authority for Advance Ruling (GAAR).

- ♦ As the IGST is already paid to the Government during customs clearance – revenue is secured. The second proviso to Section 16(2) aims to prevent evasion, not to penalize genuine deferred payments under FEMA.
- ♦ Imports are analogous to reverse charge transactions, which are expressly excluded from this proviso, thereby warranting no ITC reversal
- ♦ The foreign supplier's invoice is not a "tax invoice" under Section 2(66); therefore such commercial invoices are not covered under provisions of section 16(2) read with Rule 37 as ITC is claimed on the basis of Bill of Entry.
- ♦ Not allowing ITC on the ground of non-payment of value of supply to the foreign supplier when IGST already stands paid would amount to treating equal as unequal, which cannot be permitted.
- ♦ Therefore, Gujarat AAR held that ITC of IGST paid on import of goods remains admissible even if payment to foreign supplier is deferred beyond 180 days, provided it is within FEMA and RBI timelines.



NASA Comments

- ♦ This ruling is an important clarification for importers where payments are made beyond the period of 180 days providing them certainty about the GST provisions while upholding the principle of equity under Article 14



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