



When the Law Demands the Impossible

Analysis of the Gujarat High Court Judgment

Upholding Constitutional validity of Section 16(2)(c) of the CGST Act, 2017

Maruti Enterprise v. Union of India [Special Civil Application No. 18080 of 2023] | Judgment dated 01.05.2026

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Case Overview & Background

Particulars of the Judgment

Court:	High Court of Gujarat
Case No.:	Special Civil Application No. 18080 of 2023 & others
Judgment Date:	1st May 2026
Petitioner:	Maruti Enterprise & Others
Respondent:	Union of India & Others
Nature:	Constitutional Validity Challenge
Outcome:	Petitions still pending — Vires of Sec. 16(2)(c) Upheld

Issue Involved

Validity of Section 16(2)(c) of the CGST Act

Section 16(2)(c) provides that ITC will be eligible to the buyer **only if the tax is actually paid** to the Government.

Central Question:

Is it constitutionally valid to deny ITC to a bona fide buyer merely because the supplier has not deposited the tax, a condition over which the buyer has ***absolutely no control?***

Section 16(2)(c) — The Provision Under Challenge

Section 16(2)(c) — CGST Act, 2017

(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) to (ba)

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

Argument 1: Doctrine of Impossibility — *Lex Non Cogit Ad Impossibilia*

From the Judgment — Para 76

*As previously held by us, the provisions of Section 41 of the CGST Act read with Rule 37A of the CGST Rules, 2017 recognizes that purchaser are not unfairly penalized for a supplier's default. **It is true that the purchasers cannot compel the supplier to deposit tax with the government, thereby seek strict compliance of the provisions of Section 16(2)(c) of the CGST Act, but simultaneously they can avoid the circumstances by due care and caution. The GST regime operates on the contract/agreement between two parties. While entering into an agreement, a purchaser can ensure there is a clause that takes care of the lacuna and holds the supplier liable to indemnify the purchaser** if the said purchasing dealer suffers a loss due to a default by the supplier to remit to the government the tax collected from the purchaser. Such clauses can be made part of the agreements covering such situations.*

Court's Holding

The Court rejected the doctrine of impossibility, holding that:

- Buyers can exercise "**due care and caution**" — by inserting indemnity clauses in agreements with suppliers to hold them liable for tax deposit defaults.

JPP Network Analysis

Court says compliance is possible through written contracts. In reality:

- **90% or more** of transactions in India's commercial world do not have any written agreements.
- But even where written contracts exist, **enforcing them in court takes decades**

Argument 1: Doctrine of Impossibility — *Lex Non Cogit Ad Impossibilia*

JPP Network Analysis

- What if the supplier fails despite of '**due care and caution**' taken by the recipient – can the doctrine then prevail ?
- Is it possible, through section 41 and other machineries made available in GSTN Portal, to meet the condition of "**through utilization of input tax credit admissible**" - is *sub-silentio*

Argument 2: Should Section 16(2)(c) Be 'Read Down'?

From the Judgment — Para 60

Therefore, considering the overall scheme of the Act, any "reading down" (narrow interpretation) of Section 16(2)(c) would trigger cascading fiscal consequences. **The legal position under the former VAT regime was materially different, as input tax credit was confined within the originating state.** In contrast, the GST regime is destination-based; therefore, input tax credit must operate seamlessly across state lines for inter-State supplies, requiring strict compliance to maintain fiscal balance.

From the Judgment — Para 82

Thus, doctrine of reading down is a judicial tool used to salvage the constitutionality of a statute by giving a provision a narrowed or limited interpretation, thereby mitigating potential conflicts with constitutional or legal principles. **We do not find that the provision of Section 16(2)(c) if read with the scheme of GST regime as discussed, conflicts with constitutional or legal principles.** The provision of Section 16(2)(c) cannot be read in isolation but has to read with attendant provisions

Pari Materia Provisions — Delhi VAT Act vs CGST Act

Section 9(2)(g) — Delhi VAT Act

"No tax credit shall be allowed — (g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."

Section 16(2)(c) — CGST Act, 2017

"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 — (c) subject to the provisions of [section 41], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply."

Distinguishing Earlier Judgments

Tripura HC —
Sahil Enterprise
DISTINGUISHED

Grounds: Distinguished on grounds they did not adequately consider the interplay of Section 41 and 53 of the CGST Act read with Rule 37A. Further, the Tripura HC had also not examined the impact of Section 155 of the CGST Act.

Delhi HC — On
Quest Marketing
DISTINGUISHED

Grounds: Distinguished on grounds that Section 16(2)(c) of the CGST Act cannot be equated with the VAT regime, particularly with Section 9(2)(g) of the DVAT Act — which was confined to a single State.

Supreme Court —
Arise India
DISTINGUISHED

Grounds: Para 53 of Arise India is crystal clear. However, the Gujarat HC distinguished this binding precedent solely on the VAT vs. GST distinction without engaging with the constitutional principle under Article 14 that was the basis of the Supreme Court's ruling.

Suggestions to the Government from the High Court — Para 88

From the Judgment — Para 88

*Albeit, we acknowledge that the provisions of Section 16(2)(c) of the Act are to be viewed from a regulatory standpoint and are anchored in the legitimate objective of maintaining the integrity of the tax chain, preventing systemic revenue loss to the Government; **however, it is high time that, in order to resolve the conundrum, the Government undertakes a comprehensive re-evaluation of the dicey situation which purchasers are facing. There is a pressing need for legislative amendments or clarifications to be issued within the GST framework to alleviate the disproportionate financial and administrative burdens currently placed upon purchasers who have an honest claim of ITC. Beyond mere policy changes, the Government should implement a robust, technology-driven tracking mechanism enabling verification of payments made by suppliers against specific invoices in real time, thereby insulating bona fide recipients from the defaults of their vendors.** Simultaneously, the Government has to take prompt and immediate steps for recovery of tax from the erring suppliers, instead of compelling the purchasers to avail themselves of alternate cumbersome remedies. In the absence of stringent oversight, unscrupulous sellers could potentially enrich themselves at the expense of both the public exchequer and honest buyers.*

Our Analysis — Courts are duty bound to interpret the written law on 3 criteria

Criterion I - Constitutional Mandate

Courts must ensure that the provision does not violate fundamental rights such as denying ITC to a bona fide buyer for a third party's default raises serious Article 14 concerns that the judgment does not adequately resolve.

Criterion II - Law as it is Written

Section 16(2)(c) as written creates a condition that is admittedly impossible for a buyer to independently fulfil. The Court's own Para 76 acknowledges this — yet declines to draw the logical conclusion that the doctrine of impossibility applies.

Criterion III - Supreme Court Precedents

Para 53 of Arise India (Supreme Court) is crystal clear in protecting bona fide buyers from the consequences of supplier default. The Gujarat HC's distinction on 'VAT vs GST' without addressing the constitutional principle is, in the author's view, legally unsound.

Our View: The Hon'ble Gujarat High Court's judgment in this case does not meet all three criteria. **An act which is impossible by its own admission** and which the Court suggests to make possible through written contracts is completely against how trade India actually works.

What has High Court not dealt with...

Lex non cogit ad impossibilia

Payment of tax by supplier by utilization of 'admissible' input tax credit is beyond the scope, ability and capability of the Buyer despite of having entered into any type of contract. Machinery of section 41 read with rule 37A inapplicable and insufficient.

Lex prospicit non respicit

Taxpayer, at the time of availing ITC in Form GSTR-3B as per section 41, was entitled to ITC as per section 16 (1) and (2) and accordingly availed by Taxpayer. Later, such ITC cannot be snatched away except as provided in rule 37A read with section 41.

Power coupled with Duty and Ubi jus ibi remedium

Mere acknowledgement of power vested in Department not enough. Court should have gone further and framed the guidelines to ensure that the powers are exercised to recover dues from Supplier. On the other side, Court ought to have acknowledged that the Recipient shall also have legal remedy against wrongdoing of supplier.

Our View: The Hon'ble Gujarat High Court has suggested to have relevant clauses in the agreement, what if someone already has such clauses in the agreement, will it help him keep the ITC?

Practical Implications & Immediate Action Points for Businesses

Practical hurdles for Genuine Buyers



Double Financial Loss

Buyer has already paid GST to supplier. ITC denial means paying again — suffering twice for another's default.



Contract Remedy is Impractical

Court suggests written contracts — but 90%+ of Indian commercial transactions have no written agreements.



Cash Flow & MSME Impact

ITC reversal with interest creates acute working capital burden — particularly devastating for MSMEs working on thin margins.

Immediate Action Points

- 1 Reconcile GSTR-2B monthly — identify and follow up on supplier mismatches promptly.
- 2 Insert GST indemnity clauses in new agreements, especially for large-value vendors.
- 3 Maintain comprehensive transaction records — invoices, payments, delivery proofs.
- 4 Watch for GST Council amendments — the High Court's Para 88 suggestions may prompt legislative action.

Conclusion

This judgement is bound to be challenged in the Supreme Court and we sincerely hope the impossible which is made possible by this judgement is again placed where it belongs, hope we once again get an Arise India and a Shanti Kiran in GST as well.

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