

Key Considerations to Interpret the Supreme Court Judgment on the Eligibility of the Input Tax Credit

By: **Himanshu Sinha** (Partner), **Shashank Shekhar** (Counsel), **Tushar Joshi** (Senior Associate), **Samyak Jain** (Associate)

The Supreme Court of India has recently passed a [judgment](#) on the eligibility of the input tax credit (ITC) in the context of Section 70 of the Karnataka Value Added Tax Act, 2003 (KVAT Act). As per the judgment, the apex court held that under Section 70 of the KVAT Act, the burden was on the purchasing dealer to prove the genuineness of a transaction while claiming Input Tax Credit (ITC).

Secondly, the judgment stated that the purchase invoices and proof of payment to the seller by cheque are not sufficient to claim ITC. The purchasing dealer needs to provide additional details and documents such as the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, and acknowledgement of taking delivery of goods, including actual physical movement of the goods.

The ruling has prompted certain questions on its impact on ITC under the Goods and Services Tax (GST) regime, the purchasers, and on ease of doing business. Some of these key questions pertaining to the ruling are answered in this article.

1. **Is it necessary to prove the genuineness of the transaction to claim ITC? Are there any contrary rulings?**

This is a vexed question given that various investigations have been initiated under GST against the recipient of supplies, whereby the ITC is sought to be denied to them even though GST on input supplies may have been paid by them. For example, investigations have been initiated against various insurance companies in respect of advertisement support services received by them. Further, owing to the menace of fake invoicing, the GST Authorities are scrutinising the genuineness of transactions more closely today than ever before.

However, contrary rulings on a slightly different aspect (i.e., denial of credit to recipient on account of default in payment of tax to the Government by the supplier) have been rendered by the Delhi High Court in the case of *Arise India* and Punjab and Haryana High Court in the case of *Gheru Lal Bal Chand*. By way of the said decisions, the courts have held that no liability can be fastened on the purchasing dealer on account of non-payment of tax by the selling dealer in the treasury unless it is fraudulent, or collusion or connivance with the selling dealer or its predecessors with the purchasing registered dealer is established. Even under the GST regime, the determination of issue of denial of ITC to the recipient on account of non-payment of GST by supplier is currently pending before Delhi High Court.

2. **What should be the extent of the burden of proof on the purchaser? How would this ruling impact ITC under GST?**

Under the erstwhile Central Excise and Service Tax laws, while the onus was upon the manufacturer/ service provider to demonstrate that the underlying transaction was *bona fide*, the buyer/ recipient was required to establish the payment of tax to the manufacturer/ service provider in order to claim CENVAT Credit.

Under state VAT, however, the situation was different and buyer, while availing ITC, was required to establish genuineness of the transaction. The same has also been held by Karnataka High Court in the case of *Bagadia Brothers*.

In GST regime, the receipt of goods/services by the recipient is one of the essential conditions for eligibility for ITC. Further, the burden of prove the eligibility for ITC has been cast upon the recipient of supply. Thus, the ratio of the Supreme Court can be applied by the tax authorities to deny ITC to taxpayers under GST where they fail to furnish sufficient documentary evidence to establish the physical movement and thereby, the consequent receipt of goods.

While reasonable restrictions on the eligibility of ITC are understandable, onerous conditions should not be imposed upon the recipient. The denial of ITC should not be arbitrary such that it defeats the intention of the legislature.

3. **How will this impact businesses and ease of doing business?**

In cases where the supply has already taken place and the recipients do not possess documents to establish the actual movement of goods, the Supreme Court judgment can prove to be detrimental. However, going forward, businesses should be mindful of the requirement for maintaining sufficient records that would establish physical movement of goods and not just the invoices and proof of payment. For small and medium-scale businesses, this requirement may lead to greater compliance and additional costs.

**Himanshu Sinha is a Partner, Shashank Shekhar is a Counsel, Tushar Joshi is a Senior Associate, and Samyak Jain is an Associate at Trilegal, India's top-ranked full-service law firm. Views expressed are personal. A part of this article was used by [BQ Prime](#).*