



# Patna High Court in case of Gobinda Construction

# Gobinda Construction vs UOI [TS-455-HC(PAT)-2023-GST]

## Facts of the case:

- Assessee filed its monthly returns in Form GSTR-1 for the FY 2018- 19 but filed its return in GSTR-3B for the period February 2019 and March 2019 on October and November 2019.
- The Asst Commissioner held that ITC for the tax period February 2019 and March 2019 was availed post last date of availment as provided in Section 16(4) of GST Act.
- In appeal, the Addl Commissioner (A) upheld the original order holding that the ITC availed by the assessee for belated filing of return in Form GSTR-3B has to be disallowed.
- The assessee thereafter challenged the constitutional validity of section 16(4) before Patna High Court.

## Key Observation of Hon'ble High Court..

- Sub-section (2) of Section 16 is a non obstante clause and clearly states that no registered person shall be entitled to the credit of input tax in respect of any supply of goods or services or both unless he fulfills the requirements and satisfies the existence of other conditions prescribed in Clauses (a) to (d) thereof
- The language of Section 16 of the CGST/BGST Act suffers from no ambiguity and clearly stipulates grant of ITC subject to the conditions and restrictions put thereunder.
- ITC is not unconditional and a registered person becomes entitled to ITC only if the requisite conditions stipulated therein are fulfilled and the restrictions contemplated under sub-section (2) of Section 16 do not apply. One of the conditions to make a registered person entitled to take ITC is prescribed under sub-section (4) of Section 16.



## ..Key Observation of Hon'ble High Court..

- The right of a registered person to take ITC under sub-section (1) of Section 16 of the Act becomes a vested right only if the conditions to take it are fulfilled, free of restrictions prescribed under sub-section (2) thereof."
- In order to invoke Article 300-A of the Constitution by a person, two circumstances must jointly exist :- (i) Deprivation of property of a person, (ii) Without sanction of law."
- The provision under sub-section (4) of Section 16 is one of the conditions which makes a registered person entitled to take ITC and by no means sub-section (4) can be said to be violative of Article 300-A of the Constitution of India."
- On the contention that this Court may declare the requirement of sub-section (4) of Section 16 as directory and not mandatory, HC opined The said submission is not at all tenable in view of the clear language used in Section 16 of the Act.





## ..Key Observation of Hon'ble High Court

- The concession of ITC under sub-section (1) of Section 16 of the CGST/ BGST Act is dependent upon the fulfillment of requisite conditions laid down under various provisions including sub-section (4) thereof.
- Thus, HC held "that sub-section (4) of Section 16 of the CGST/ BGST Act are constitutionally valid and are not violative of Articles 19(1)(g) and Article 300-A of the Constitution of India.
- The said provision is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India

# THANK YOU

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