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W.P.Nos.27038 of 2025 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2025
DELIVERED ON : 05.03.2026

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP Nos.27038 and 28371 of 2025
and WMP Nos.30334, 30336, 30338, 30341, 31776, 30330, 30332,
31768, 31770, 31771, 31772 and 31773 of 2025

W.P.No.27038 of 2025:

Reliance Jio Infocomm Ltd
Rep by its Power of Attorney Holder
Kumar Jayaraman
5th Floor, No 89 A1 Towers
Dr Radhakrishnan Salai, Mylapore
Chennai-600 004.

Petitioner(s)

Vs

1. Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.
2. State of Tamilnadu
Through the Secretary
Commercial Taxes and Registration
Department, Ezhilagam
PWD Estate, Chepauk
Chennai - 600 005.



W.P.Nos.27038 of 2025 etc

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3. Commissioner of Central Tax
and Central Excise
Audit - I Commissionerate, No 1775
Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extension
Chennai - 600 101.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of:

(i) a writ of declaration to declare Rule 39(1)(a) of the Central Goods and Services Tax Act, 2017, as it stands after 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution;

(ii) a writ of declaration to declare Rule 39(1)(a) of the Tamil Nadu Goods and Services Tax Act, 2017, as it stands after 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution;

(iii) a writ of declaration to declare Rule 39(1)(a) of the Central Goods and Services Tax Act, 2017, as it stood prior to 01.04.2025, to the extent that it required ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution, and ultra vires Section 20 of the Central Goods and Services Tax Act, 2017;

(iv) a writ of declaration to declare Rule 39(1)(a) of the Tamil Nadu Goods and Services Tax Act, 2017, as it stood prior to 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution and ultra vires Section 20 of the Central Goods and Services Tax Act, 2017; and

(v) a writ of certiorari to call for the records and proceedings relating



W.P.Nos.27038 of 2025 etc

to the impugned Show Cause Notice No.216/2025-AUDIT I, dated 27.06.2025 issued by the Respondent No.3 to the petitioner herein and quash the same as illegal.

For Petitioner(s): Mr.Arvind P Datar
Senior Counsel
for Mr.Rahul Unnikrishnan

For Respondent(s): Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Ms.Revathi Manivannan
Senior Standing Counsel
for R1 and R3

Mr.Haja Nazirudeen
Additional Advocate General
Assisted by Mr.V.Prashanth Kiran
Government Advocate
for R2

WP No.28371 of 2025:

Reliance Jio Infocomm Ltd
Rep by its Power of Attorney Holder
Kumar Jayaraman
Having its office at 145
Muthumariamman Koil Street
Puducherry - 605 009.

Petitioner(s)

Vs

1. Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.



W.P.Nos.27038 of 2025 etc

2. Government of Puducherry
Through the Secretary
Commercial Taxes Department
Government of Puducherry
100 feet Road Ellapillaichavady
Pondicherry – 605005.

3. Commissioner of Central Tax
and Central Excise
Audit I Commissionerate
No.1775, Jawaharlal Nehru
Inner Ring Road, Anna Nagar
Western Extension
Chennai - 600 101

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of:

(i) a writ of declaration to declare Rule 39(1)(a) of the Central Goods and Services Tax Act, 2017, (CGST Act) as it stands after 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution;

(ii) a writ of declaration to declare Rule 39(1)(a) of the Puducherry Goods and Services Tax Act, 2017 (PUGST Act), as it stands after 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution;

(iii) a writ of declaration to declare Rule 39(1)(a) of the Central Goods and Services Tax Act, 2017, as it stood prior to 01.04.2025, to the extent that it required ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution, and ultra vires Section 20 of the Central Goods and Services Tax Act, 2017;



W.P.Nos.27038 of 2025 etc

(iv) a writ of declaration to declare Rule 39(1)(a) of the Puducherry Goods and Services Tax Act, 2017, as it stood prior to 01.04.2025, to the extent that it requires ITC to be distributed by an ISD in the same month as the date of the underlying input service invoice, as being manifestly arbitrary and violative of Article 14 of the Constitution, and ultra vires Section 20 of the Puducherry Goods and Services Tax Act, 2017; and

(v) a writ of certiorari to call for the records and proceedings relating to the impugned Show Cause Notice No.185/2025-AUDIT I, dated 26.06.2025 issued by the Respondent No.3 to the petitioner herein and quash the same as illegal.

For Petitioner(s): Mr.Arvind P Datar
Senior Counsel
for Mr.Rahul Unnikrishnan

For Respondent(s): Mr.Su.Srinivasan
Senior Central Government
Standing Counsel
for R1 and R3

Mr.S.Raveekumar
Government Pleader (Pondy)
assisted by
Mr.V.Vasantha Kumar
Additional Government Pleader (Pondy)
for R2

COMMON ORDER

THE CHIEF JUSTICE

In W.P.No.27038 of 2025, the challenge is to the validity of Rule 39(1)(a) of the Central Goods and Services Tax Rules, 2017



W.P.Nos.27038 of 2025 etc

and Rule 39(1)(a) of the Tamil Nadu Goods and Services Tax Rules, 2017 in respect of two periods, viz., prior to 01.04.2025 and thereafter, as 01.04.2025 is the date on which the amendments to Section 20 of the Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act, 2017 were brought into effect. The petitioner also sought quashment of the show cause notice dated 27.6.2025.

2. In W.P.No.28371 of 2025, the petitioner calls into question the validity of Rule 39(1)(a) of the Central Goods and Services Tax Rules, 2017 and Rule 39(1)(a) of the Puducherry Goods and Services Tax Rules, 2017 in respect of two periods, viz., prior to 01.04.2025 and thereafter, as 01.04.2025 is the date on which the amendments to Section 20 of the Central Goods and Services Tax Act, 2017 and the Puducherry Goods and Services Tax Act, 2017 were brought into effect. The petitioner also prayed for setting aside the show cause notice dated 26.6.2025.

3. As the provisions under challenge in both the writ petitions are one and the same, we shall take up W.P.No.27038 of 2025 as



lead case to decide the issues raised.

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4.1. An *apercu* of the facts relevant reads thus: The petitioner, a company incorporated under the Companies Act, 1956, is engaged in the business of providing telecommunication services and was granted separate GST registrations in each State and Union Territory from where it supplies telecommunication services. According to the petitioner, each such registration is treated as a distinct person.

4.2. It is averred that the CGST/TNGST laws provide for a concept of Input Service Distributor (ISD) and in cases where an assessee has several units and there are common service providers, it is necessary that the credit in respect of input services is distributed so that the entire credit is not taken by the Head Office alone. The Input Tax Credit (ITC), as per law, is to be distributed *pro rata* on the basis of turnover of the individual units in the preceding financial year. As each branch office in a State has to be separately registered, the petitioner has 36 registrations in almost all the States/Union Territories.



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4.3. It is stated that before 01.04.2025, Section 20 of the CGST Act did not empower the Central Government to prescribe the time limit within which the ISD was required to distribute credit. The power to do so was introduced with effect from 01.04.2025 by insertion of the phrase "*within such time and subject to such restrictions and conditions as may be prescribed*" in Section 20(2) of the CGST Act. It is further stated that, as per the said amendment, ITC has to be distributed by an ISD in the same month as the date of the underlying input service invoice.

4.4. The plea of the petitioner is that, for the period prior to 01.04.2025, respondent Nos.2 and 3 do not have the power to prescribe a time limit for distribution of ITC by an ISD unit and, therefore, the provisions of Rule 39(I)(a) of the CGST Rules/TNGST Rules purportedly stipulating that the ITC has to be distributed in the same month as the month in which the underlying input service invoice was issued, are beyond the scope and powers vested by the parent legislation.



W.P.Nos.27038 of 2025 etc

4.5. It is the further case of the petitioner that the purported stipulation that ITC has to be distributed in the same month as the month in which the underlying input service was issued is not only impossible to fulfill, but also arbitrary and unreasonable, as the ISD is not only required to determine to which recipient unit the input service invoice is attributable to, but also whether the said input service invoice pertains to eligible credit or ineligible credit and whether the conditions under the CGST Act/TNGST Act have been fulfilled qua such invoices. When Section 16(4) of the CGST Act/TNGST Act stipulates a time limit of around November of the financial year subsequent to the financial year in which the invoice was issued, any stipulation that the distribution must happen forthwith is unreasonable and arbitrary.

4.6. It is further averred that the show cause notice dated 27.6.2025, which pertains to the financial years 2018-2019 to 2023-2024, is unsustainable and without jurisdiction as Rule 39(1) (a) of the Rules has been substituted with effect from 1.4.2025, without a savings clause.



W.P.Nos.27038 of 2025 etc

4.7. In such factual backdrop, the present writ petition is filed for the relief stated supra.

5.1. Mr.Arvind P. Datar, learned Senior Counsel appearing on behalf of the petitioners, submitted that:

- a) Though the government was empowered to prescribe a time limit for distribution of ITC in terms of Section 20 of the CGST Act/TNGST Act, the time limit could not have been the same month as the month in which the invoice was issued by the supplier, as it is impossible to be complied with, rendering it manifestly arbitrary and *ultra vires* Article 14 of the Constitution of India;
- b) The amendment to Section 20 of the CGST Act/TNGST Act can apply only prospectively, as it is a settled proposition of law that an amendment is prospective, unless expressly stated to be retrospective. By fixing a time limit, a substantive change has been brought in by the government and, by no stretch of imagination, the amendment could be termed as “clarificatory” to apply retrospectively;
- c) It is impossible to distribute the ITC without ensuring



W.P.Nos.27038 of 2025 etc

compliance of the conditions stipulated under Section 16 of the Act. Moreover, the assessee needs to ascertain as to which unit the input service in question was attributable to, before applying the distribution formula prescribed under Section 20 of the Act read with Rule 39 of the Rules. The entire exercise is time consuming and practically impossible of compliance;

d) Rule 39(1)(a) has to be read down and the phrase "*available for distribution*" employed therein is to be interpreted to mean when the conditions under Section 16 of the Act have been fulfilled. In other words, the expression in Section 20(1) of the Act, viz., "*input service distributor shall distribute the credit*" (prior to amendment) and the expression "*shall distribute the input tax credit*" (after amendment) should be interpreted to mean the credit fulfilling the requirements of Section 16(2) of the Act. The entitlement to ITC arises only when the conditions of Section 16 of the Act are satisfied;

e) If the credit is distributed as per the invoice, the assessee has to suffer adverse consequences, including



W.P.Nos.27038 of 2025 etc

liability for interest and penalty under Section 21 read with Sections 73 and 74 of the Act. The assessee cannot be compelled to distribute the credit first and reverse it at a later date, making it liable for interest and penalty;

f) There is no revenue loss if the distribution is done in a month after the month of issuance of invoice and, in any event, it is to the taxpayer's detriment to delay distribution, in as much as the undistributed credit cannot be set-off against output liability till it is distributed; and

g) By way of illustration, it is put forth that it is the ISD which has to segregate eligible and ineligible ITC and distribute them and in a case where the GST invoice is issued on 30th of a month, it is impossible to distribute through ISD invoice on the same day or the next day and, thus, the rule violates Article 19(1)(g) of the Constitution by imposing unreasonable restrictions on the right to carry on business.

5.2. Learned Senior Counsel relied upon a decision of the Supreme Court in the case of *Sales Tax Officer Ponkunnam and*



W.P.Nos.27038 of 2025 etc

another v. K.I.Abraham¹, wherein Rule 6 of the Central Sales Tax (Kerala) Rules, 1957 was struck down as being *ultra vires* Section 8 of the Central Sales Tax Act, as the parent provision did not empower prescription of a time limit. He added that the said judgment is squarely applicable to the case in hand.

6.1. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of respondent Nos.1 and 3, submitted that:

(a) Rule 39(1)(a) of the Central Goods and Services Tax Rules, 2017 has been validly framed in exercise of the rule-making power conferred under Section 164 of the CGST Act, 2017, read with Section 20 of the CGST Act, which empowers the Government to prescribe the manner of distribution of ITC by ISD. The rule operates within the statutory framework and is a necessary supplement to the substantive provisions of the Act. Therefore, challenge to the constitutional validity of the said Rule falls flat. The same-month distribution requirement is neither impossible

¹AIR 1967 SC 1823



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W.P.Nos.27038 of 2025 etc

nor arbitrary, and serves the legitimate purpose of maintaining the integrity of the GST system and preventing revenue leakage;

(b) The amendment to Section 20(2) of the CGST Act with effect from 01.04.2025, inserting the phrase "*within such time and subject to such restrictions and conditions as may be prescribed*" is only a clarificatory amendment and clarifies what was already in Section 20 of the Act and validates the existing Rule 39(1)(a) of the Rules. The amendment makes explicit what was always implicit in the power to prescribe "manner" of distribution. Rule 39(1)(a) is a procedural rule prescribing the timeline for distribution of ITC by ISD, which directly carries out the provisions of Section 20 of the Act. The Rule does not create any new liability or right independent of the Act, but merely operationalizes the ITC distribution mechanism contemplated under Section 20 of the Act. The fact that Parliament found it necessary to insert this phrase demonstrates that the power to prescribe time limits was intended to be part of the rule-making authority from the inception of the Act. The rule is ancillary and



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W.P.Nos.27038 of 2025 etc

subservient to the main provisions of the Act and does not travel beyond the scope of the enabling statute;

(c) The classification created by Rule 39(1)(a) of the Rules between ISD recipients and other registered persons is founded on *intelligible differentia* having rational nexus with the object sought to be achieved. The ISD mechanism addresses the unique situation of entities having multiple GSTIN registrations under the same PAN, requiring a specialized mechanism for equitable distribution of common Input Tax Credit. ISDs are centralized distribution hubs, not end-users of credit. This fundamental difference justifies separate treatment. That apart, the same-month distribution requirement has rational nexus with the legislative objects of (a) preventing accumulation of credit in ISD registrations; (b) ensuring actual recipient units receive credit contemporaneously with invoices within the same timelines; (c) preventing manipulation through delayed distribution; (d) maintaining audit trail integrity: and (e) facilitating destination-based taxation principle under GST. Mere centralisation of invoicing and distribution of Credit by



W.P.Nos.27038 of 2025 etc

the ISD cannot change this basic receipt of credit by the actual receiver of service within a time limit. Therefore, the rule does not violate Article 14 of the Constitution of India;

(d) Rule 39(1)(a) of the Rules does not violate the fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution. Input Tax Credit is a statutory benefit, not an absolute right, and can be regulated through conditions prescribed by law. The procedural requirements do not prohibit business activities, but merely regulate the manner of claiming tax benefits. The restrictions imposed under Rule 39(1)(a) of the Rules are reasonable restrictions in the interest of general public and for maintaining integrity of the tax system. They are designed to ensure proper administration of GST law, prevent revenue leakage, and facilitate audit and verification processes and, hence, there is no violation of Article 19(1)(g) of the Constitution of India;

(e) ISD distribution is not the same as "taking" or "availing" input tax credit under Section 16 of the CGST Act. It is merely an internal accounting adjustment, a book entry



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W.P.Nos.27038 of 2025 etc

transferring credit from the ISD registration to recipient registrations under the same PAN. Petitioner is seeking to mix up this distribution of credit with actual availment of credit. The conditions under Section 16(2) of the Act are relevant only when the Branch GSTIN registrations to whom it is distributed avails or takes the credit, not when ISD distributes the credit to its branches. Therefore, the argument advanced by the petitioners that conditions stipulated under Section 16(2) of the Act must be verified before each distribution is off beam and misunderstands the fundamental nature of ISD mechanism;

(f) Section 16(4) of the Act CGST has no application to ISD distribution time limit. The said provision deals with the outer time limit for actual recipient registered person to claim ITC in their books and returns. It has no connection whatsoever with the ISD's obligation to distribute credit in the same month as the invoice under Rule 39(1)(a) of the Rules. The petitioner's attempt to conflate Section 16(4) of the CGST Act dealing with availment of credit by recipient with Rule 39(1)(a) of the CGST Rules dealing with



W.P.Nos.27038 of 2025 etc

distribution by ISO is a deliberate attempt to create confusion and must be rejected outright;

(g) The show cause notice dated 27.06.2025 is based on detailed audit findings covering financial years 2018-19 to 2023-24. The audit was conducted under Section 65 of the CGST Act and revealed systematic contraventions by the petitioner in ISD credit distribution. The petitioner failed to provide complete GSTR-6 calculations and inward supply invoice details to substantiate ISD credit entitlement. This lack of cooperation and transparency during audit proceedings further demonstrates that the contraventions were not mere inadvertent errors, but part of a systematic pattern.

(h) In any event, the present writ petition is premature and not maintainable as the show cause notice is still pending adjudication. The petitioner has adequate opportunity to raise all contentions, both factual and legal, in the statutory proceedings before the adjudicating authority. Under the guise of constitutional challenge to statutory rules, which is without substance, petitioner



W.P.Nos.27038 of 2025 etc

cannot bypass statutory remedies without the petitioner first demonstrating that such remedies are inadequate or would cause irreparable harm.

6.2. Placing reliance upon a decision of the Supreme Court in *Jayam & Co. v. Assistant Commissioner*², wherein it is held that procedural conditions for availing tax benefits are within legislative competence and do not violate fundamental rights if they are reasonable and serve legitimate policy objectives, it is submitted that the same-month distribution requirement under Rule 39(1)(a) of the Rules is a reasonable procedural condition serving the legitimate objectives of revenue protection and prevention of fraud.

6.3. Reliance is also placed on a decision in the case of *Union of India v. VKC Footsteps India Pvt Ltd*³, wherein it is categorically held that ITC is a statutory benefit subject to conditions prescribed by law. The conditions cannot be termed as unreasonable merely because they require diligent compliance by taxpayers. This principle fully supports the validity of Rule 39(1)(a) of the Rules,

²(2016) 15 SCC 125

³(2022) 2 SCC 603



W.P.Nos.27038 of 2025 etc

which prescribes a reasonable timeline for ISD credit distribution.

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6.4. Relying on the decision of the Supreme Court in *ALD Automotive Pvt Ltd. v. The Commercial Tax Officer and Ors.*⁴, wherein the validity and mandatory nature of time limits for claiming ITC was upheld, it is submitted that the said judgment is squarely applicable to Rule 39(1)(a) of the Rules, which prescribes same-month distribution timeline for ISD credit distribution.

7. Learned counsel for the second respondent in W.P.No.27038 of 2025 adopted the arguments advanced by learned Additional Solicitor General of India.

8. Learned counsel for the respondents in W.P.No.28371 of 2025 also advanced arguments on the same lines.

9. We have bestowed our anxious consideration to the arguments advanced by learned counsel on either side.

⁴(2019) 13 SCC 225



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13.1. The show cause notice in W.P.No.27038 of 2025 alleges contravention on the statement that, on verification of auto populated details of invoices in GSTR2A of the taxpayer during the period 2020-21 and 2022-23, it was noticed that in respect of certain ISD invoices the "ITC eligible Yes/ No" column has been marked as "No". That means ITC against such invoices is not eligible. As per auto populated details in GSTR2A, as alleged, the taxpayer has availed excess ISD credit than the eligible ITC that is available as per the table shown therein.

13.2. It is further stated that on verification of the ISD credit details for the Chennai ISD as per GSTR-6 as submitted, it was noticed that the tax payer has declared availability of credit of Rs.51,55,243/- (IGST) based on receipt from GSTINs of other than Tamil Nadu State having Permanent Account Number (PAN). Therefore, it is alleged that such credit amounts have been shown as received for distribution against the inward supply invoices which have been issued by the taxpayer having same PAN registration in States other than Tamil Nadu along with the details therein.



W.P.Nos.27038 of 2025 etc

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13.3. What is further stated is that, on verification of the details of ISD credit submitted by the taxpayer said to be related to the ISD with the GSTR-2A submitted by the taxpayer, they were requested to furnish details of total ISD credit availed by them, including other details of original supply invoices / calculations / availability of credit with ISD, etc. It is then alleged that the taxpayer selectively furnished ISD credit details in excel format with corresponding GSTR-6A data and sample ISD invoices on a random basis, for ISD credit received during subject tax period from Chennai ISD and Maharashtra ISD.

13.4. It is also alleged that, on verification of the details and sample ISD invoices furnished by the taxpayer, it is found that the ITC availed by the taxpayer based was on the invoices which were not issued by the Input Service Distributor(s) in the same month of receipt of original inward supply invoice, which, according to the respondents, is contrary to the provisions laid down for such transfer of credit, followed by details.



W.P.Nos.27038 of 2025 etc

13.5. Having quoted provisions contained in Sections 20 and 21 of the CGST Act and Rules 39 and 54 of the CGST Rules, 2017, the impugned show cause notice states thus:

"2.5.3.1. Section 20 of the CGST Act, 2017 provides for the manner of distribution of ISD credit and Section 20(2)(b) states that the amount of credit distributed shall not exceed the amount of credit available for distribution. Rule 39 of the CGST Act, 2017 provides for the procedure for distribution of the ISD credit. Rule 39(l)(a) of CGST Rules, 2017 clearly states that the ITC available for distribution in a month shall be distributed in the same month. Therefore, it appears that only such of those credit which are available during the month for the Input Service distributor can be distributed during that month. In the instant case, it appears that the credit received from the Input Service Distributor appears to contain credit relating to the earlier months, which is totally contradictory and in contravention to the provisions of Section 20 of CGST Act, 2017 read with Rule 39 of the CGST Rules, 2017."

13.6. Thus, what has been alleged in the show cause notice is that in the matter of distribution of credits available in a particular



W.P.Nos.27038 of 2025 etc

month, distribution was not made in the same month as mandated in Rule 39(1)(a) of the CGST Rules.

14. In W.P.No.28371 of 2025 also identical allegations have been made. It is stated that the legal mandate engrafted in Rule 39(1)(a) of the Rules qua distribution of credit has been contravened, as the same was not distributed by the distributor to respective branch having separate registration in the same month of receipt of invoice.

15. Thus, in both the cases, on such allegation, it has been stated that the petitioners have sought to wrongly avail ITC of the distributed credit.

STATUTORY SCHEME WITH REGARD TO ENTITLEMENT AND
AVAILMENT OF INPUT TAX CREDIT

16. In the legal regime of the CGST Act, 2017, tax in the nature of goods and service tax is leviable in accordance with the provisions under Section 9 of the CGST Act providing for levy as well as collection of goods and service tax.



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17. Chapter V deals with ITC and contains various provisions providing for eligibility and conditions for taking ITC.

18. The definitions of the expressions “*input*”, “*input service*”, “*input tax*” and “*input tax credit*” were noticed by the Apex Court in the case of *Union of India v. VKC Footsteps India Pvt Ltd* (supra) as under:

“60. The definition of the expression ‘input’ is contained in Section 2(59) which reads thus:

“2. (59) ‘input’ means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;”

The expression ‘input’ is thus defined to mean goods other than capital goods. The definition, however, incorporates a requirement of use, actual or intended, by a supplier or in the course or furtherance of business.

61. ‘Input service’ is defined in Section 2(60) as follows:



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W.P.Nos.27038 of 2025 etc

"2. (60) 'input service' means any service used or intended to be used by a supplier in the course or furtherance of business;"

The definition of "input service" is parallel to that of "input", with the important distinction that while "input" is defined with reference to "any goods", "input service" is defined in relation to "any service". Both sets of definitions incorporate the further requirement of use or intended use by a supplier in the course or furtherance of business.

62. The expression "input tax" is defined in Section 2(62):

"2. (62) "input tax" in relation to a registered person, means the Central tax, State tax, integrated tax or Union Territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of Section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of Section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of Section 9 of the



W.P.Nos.27038 of 2025 etc

*respective State Goods and Services Tax Act;
or*

*(e) the tax payable under the provisions of
sub-sections (3) and (4) of Section 7 of the
Union Territory Goods and Services Tax Act,
but does not include the tax paid under the
composition levy;"*

*The expression "input tax" in relation to a registered
person means (i) the Central, State, Integrated or
Union Territory tax; (ii) charged on any supply of
goods or services or both made to a registered person.
This is followed by an inclusive definition.*

*63. The expression "input tax credit" is defined in
Section 2(63):*

*"2. (63) "input tax credit" means the credit of
input tax;"*

*Evidently, since input tax credit means the credit on
input tax, the definition of the expression "input tax"
has to be read into Section 2(63) in understanding the
ambit of the expression "input tax credit". Now, input
tax is the tax charged on the supply of goods or
services or both."*

19. Under the CGST Act, eligibility and conditions for taking
ITC have been provided under Section 16 of the Act as below:



W.P.Nos.27038 of 2025 etc

"16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(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) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice



W.P.Nos.27038 of 2025 etc

or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the



W.P.Nos.27038 of 2025 etc

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

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

PROVIDED FURTHER that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50, in such manner as may be prescribed:

PROVIDED ALSO that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of



W.P.Nos.27038 of 2025 etc

supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

PROVIDED that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under



subsection (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,--

(i) filed upto thirtieth day of November following the financial year to which such



invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later.”

20. On a bare reading of the provisions contained in Section 16(2) of the Act, it is clear that 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 the conditions prescribed in Clauses (a), (aa), (b), (ba), (c) and (d) are fulfilled.

21. Importantly, receipt of notice is only the first step which necessarily has to follow fulfillment of other conditions.

22. In the case of *Union of India v. VKC Footsteps India Pvt*



W.P.Nos.27038 of 2025 etc

Ltd (supra), in the matter of challenge to the validity of the statutory scheme of refund of unutilised ITC, after having referred to the provision contained in Section 16 of the CGST Act, it was held as follows:

"70. Section 16(2) indicates that the credit of input tax charged on any supply of goods or services, or both, can be availed of by a registered person subject to the conditions which are set out in the provisos. Input tax, as we have already seen, has been defined in Section 2(62) as tax charged on any supply of goods or services or both. The credit of input tax is, therefore, relatable both to the supply of goods and services. Whether tax is paid on the supply of goods or services, the recipients receive ITC in a similar manner. Taxes on goods and services are identifiable, but upon credit to the electronic ledger they form a common pool for utilisation."

23. It is thus clear that the credit of input tax charged on any goods or services or both can be availed by a registered person subject to the conditions which are set out in the provisions.



W.P.Nos.27038 of 2025 etc

24.1. In the case of *ALD Automotive Pvt Ltd. v. The Commercial Tax Officer and Ors* (supra), it was held that the input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme and that concession can be received by the beneficiary only as per the scheme of the statute. It was held as below:

"34. The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. CST, (1992) 3 SCC 624. Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax. This Court held that the rule-making authority can provide curtailment while extending the concession. In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32)

'9. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules—which, as stated above, are



W.P.Nos.27038 of 2025 etc

conceived mainly in the interest of public—that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on



W.P.Nos.27038 of 2025 etc

sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State.”

24.2. In the said decision, the fulfillment of preconditions for availing concession was held to be mandatory relying upon another decision in the case of *India Agencies v. CCT*⁵, as below:

"35. A three-Judge Bench in India Agencies v. CCT, (2005) 2 SCC 129 had the occasion to consider Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957, which requires furnishing of original Form C to claim concessional rate of tax under Section 8(1). This Court held that the requirement under the Rule is mandatory and without producing the specified documents, dealers cannot claim the benefits. The following was laid down in para 13: (SCC pp. 139-140)

'13. ... Under Rule 6(b)(ii) of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of

⁵(2005) 2 SCC 129



W.P.Nos.27038 of 2025 etc

the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory.”

24.3. The other legal proposition of law that taxing statute is to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given and under what circumstances was also clearly stated as below:

"36. This Court had the occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka v. M.K. Agro Tech. (P) Ltd., (2017) 16 SCC 210. This Court held that it is a settled proposition of law that taxing statutes are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. The following was stated in para 32: (SCC p. 223)



'32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same.'"



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24.4. Interpreting similar provision with regard to availing of ITC under the Tamil Nadu Value Added Tax Act, 2006, it was highlighted that ITC is in the form of concession and it was categorically held that such ITC would be available on certain conditions stipulated in law. The relevant paragraphs are reproduced hereunder:

"37. The judgment on which the learned Advocate General of Tamil Nadu had placed much reliance i.e. Jayam & Co. v. Commr., (2016) 15 SCC 125, is the judgment which is relevant for the present case. In the above case, this Court had the occasion to interpret the provisions of the Tamil Nadu Value Added Tax Act, 2006, Section 19(20), Section 3(2) and Section 3(3). Validity of Section 19(20) was under challenge in the said case. This Court after noticing the scheme under Section 19 noticed the following aspects in para 11: (SCC p. 134)

*'11. From the aforesaid scheme of Section 19 the following significant aspects emerge:
(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.*



W.P.Nos.27038 of 2025 etc

(b) Concession of ITC is available on certain conditions mentioned in this section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.'

38. This Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. In para 12, the following has been laid down: (SCC pp. 134-35)

'12. It is trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken



W.P.Nos.27038 of 2025 etc

into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.”

25. It is thus clear that unless all the conditions stipulated in Section 16(2) of the CGST Act are fulfilled as required under the law, a registered person is not entitled to take ITC.

26. The manner in which the ITC can be availed under the statutory scheme of the CGST Act is provided in Rule 36 of the CGST Rules, which details the documentary requirements and conditions for claiming ITC as below:

"Rule 36. Documentary requirements and conditions for claiming input tax credit.-



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W.P.Nos.27038 of 2025 etc

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;*
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;*
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;*
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;*
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of [rule 54](#).*

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document:



Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of [section 37](#) unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in [FORM GSTR-1](#) [, as amended in FORM GSTR-1A if any,] or using the invoice furnishing facility; and

(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person



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W.P.Nos.27038 of 2025 etc

in *FORM GSTR-2B* under sub-rule (7) of rule 60.”

27. Rule 37 of the CGST Rules provides for reversal of ITC in the case of non-payment of consideration, whereas Rule 37A of the CGST Rules provides for reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof. Rule 38 of the CGST Rules provides for claim of credit by a banking company or a financial institution.

28. A conjoint reading of the provisions contained in Section 16 of the CGST Act and the Rules, referred to herein above, would reveal that mere receipt of invoice does not entitle the registered dealer to claim to be entitled to ITC without fulfillment of other conditions enumerated therein. Various conditions incorporated therein, including submission of details of invoices or debit notes furnished in the statement of outward supplies in Form GSTR-1 [as amended in Form GSTR-1A (if any)] and communication of details of ITC in respect of such invoice or debit notices to the registered person in Form GSTR-2B [as provided under Rule 37(4) of the CGST



W.P.Nos.27038 of 2025 etc

Rules], alone would finally lead to a situation where ITC can be said to be availed legally and in accordance with the statutory scheme of CGST Act and the Rules made thereunder, not otherwise.

STATUTORY SCHEME OF DISTRIBUTION OF CREDIT

29. There is a scheme of distribution of credit as provided under Section 20 of the CGST Act in those cases where the ISD mechanism addresses unique situation of entities having multiple GSTIN registrations under the same PAN, having their offices located in different parts and in various States. It requires a specialized mechanism for equitable distribution of common ITC.

30. The manner of distribution of credit by ISD is provided in Section 20 of the Act. At this stage, it would be apposite to mention herein that Section 20 of the CGST Act, as it stands after amendment with effect from 1.4.2025 and as it stood prior to the said amendment, are relevant for our discussion in the present case, as the operation of Rule 39(1)(a) of the Rules in the pre-amendment regime prior to 1.4.2025 has also been raised.



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31. Section 20 of the CGST Act, as it stood prior to 1.4.2025, did not contain the expression "*in such manner as may be prescribed*". It was only by way of amendment with effect from 1.4.2025 that new Section 20 of the CGST Act was substituted by Finance Act, 2024 [8 of 2024], dated 15.2.2024. After substitution, Section 20 of the CGST Act, as in force with effect from 1.4.2025, reads as below:

"20. Manner of distribution of credit by Input Service Distributor.-

(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9 of this Act or under subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.



W.P.Nos.27038 of 2025 etc

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed."

32. At this stage, it is relevant to note that Rule 39 of the CGST Rules also underwent an amendment by substitution vide Notification dated 10.7.2024. Rule 39 of the CGST Rules, as in force, reads thus:

"Rule 39. Procedure for distribution of input tax credit by Input Service Distributor.-

(1) An Input Service Distributor shall distribute input



tax credit in the manner and subject to the following conditions, namely: –

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these rules;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;



(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period;

(f) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one of the recipients "R1", whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipients who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula –

$$C1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

" t₁ " is the turnover, as referred to in clause (d) and (e), of person R₁ during the relevant period, and



"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e);

(g) the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d) and (e);

(i) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(j) the input tax credit on account of central tax and State tax or Union territory tax shall–

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union



territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clause (d) and (e);

(k) the Input Service Distributor shall issue an Input Service Distributor invoice, as provided in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(l) the Input Service Distributor shall issue an Input Service Distributor credit note, as provided in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(m) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be



W.P.Nos.27038 of 2025 etc

calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(n) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted;

(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may



be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (n) of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (l) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

Explanation. — For the purpose of this rule, –

(i) the term —“relevant period” shall be—

(a) if the recipients of credit have turnover in their



States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(ii) the expression—"recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(iii) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule."

33. Section 20 of the CGST Act read with Rule 39 of the CGST Rules provide for distribution of ITC by ISD. Clause (a) of Rule 39(1) of the CGST Rules, which is under challenge, provides that



W.P.Nos.27038 of 2025 etc

the ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in Form GSTR-6 in accordance with the provisions of Chapter VIII of these Rules. The prescription of distribution in the same month of the ITC available for distribution requires the distributor to distribute the ITC which has become available for distribution as would be clear from the expression "*the input tax credit available for distribution in a month*".

34. Rule 39 has been framed in exercise of power of delegated legislation by the Central Government and, therefore, has necessarily to be consistent with and within the limits of the rule making power as delegated under the enabling Act.

35. Challenge to the validity of the aforesaid Rule is premised fundamentally on the submission that prior to substitution of new provision of Section 20 of the CGST Act, with effect from 1.4.2025, the unamended provision did not provide for time limit and, therefore, as long as the unamended provision of Section 20 of the CGST Act was in force, i.e., prior to 1.4.2025, the Rule requiring



W.P.Nos.27038 of 2025 etc

time limit for distribution is ultra vires unamended Section 20 of the CGST Act.

36. The response of the respondents is that it only prescribes the manner in which distribution has to be made and, therefore, it cannot be said be ultra vires the provisions of the enabling Act.

37. This aspect we will consider at a later stage, if at all required for our discussion.

INTERPLAY OF SECTION 16 AND 20 OF THE CGST ACT –
SCHEME OF ENTITLEMENT TO CREDIT AND
DISTRIBUTION OF CREDIT

38. While Section 16 of the CGST Act provides for eligibility to available ITC, Section 20 of the CGST Act deals with distribution of credit in certain circumstances where the assessee like the petitioners herein have several units and there are common service providers, in which case, the law requires that ITC should be distributed *pro rata* on the basis of turnover of the individual units, as each branch office in the State has to be separately registered.



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39. Whether the scheme of the CGST Act envisages distribution of credit only upon receipt of invoices or upon fulfillment of the conditions enumerated in Section 16(2) of the CGST Act to become entitled to avail ITC will have to be answered by applying the principle and construction which advances the object of the enactment.

40. It behooves us to reiterate the salutary principle of purposive interpretation accentuated by the Supreme Court in *Vivek Narayan Sharma (Demonetisation Case-5 J.) v. Union of India*, (2023) 3 SCC 1, while considering the constitutionality of an enactment. The relevant portions of the said decision are reproduced herein below:

"143. In Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237, O. Chinnappa Reddy, J. explained the position as under: (SCC p. 243, para 9)

'9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so



interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.'

144. After referring to various earlier judgments of other jurisdictions, his Lordship observed thus : Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237, SCC p. 246, para 16:

'16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be



W.P.Nos.27038 of 2025 etc

adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. ITO, (1981) 4 SCC 173, State Bank of Travancore v. Mohd. M. Khan, (1981) 4 SCC 82, Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449, Ravula Subba Rao v. CIT, AIR 1956 SC 604, Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, (1975) 2 SCC 482 and Babaji Kondaji Garad v. Nasik Merchants Coop. Bank Ltd., (1984) 2 SCC 50'

145. M.N. Venkatachaliah, J. speaking for the Constitution Bench of this Court in *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, (1989) 3 SCC 709 observed thus : (SCC p. 754, paras 118-20)

'118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ut res magis valeat quam pereat. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or



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W.P.Nos.27038 of 2025 etc

unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co., (1900) 2 Ch 352 Farwell, J. said : (pp. 360-61)

'... Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty.'

119. *In Fawcett Properties Ltd. v. Buckingham County Council, (1960) 3 WLR 831, Lord Denning approving the dictum of Farwell, J., said : (Ch p. 849)*

'... But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity.'

120. *It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not*



W.P.Nos.27038 of 2025 etc

inept and the nothing short of impossibility should allow a court to declare a statute unworkable.

In Whitney v. IRC, 1926 AC 37 (HL)] Lord Dunedin said : (AC p. 52)

'... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.'"

146. In State of Gujarat v. R.A. Mehta, (2013) 3 SCC 1, this Court held as under : (SCC pp. 47-48, para 98)

'98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context



W.P.Nos.27038 of 2025 etc

of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. 'The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.' The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and 'to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico'. The court must give effect to



W.P.Nos.27038 of 2025 etc

the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide M. Pentiah v. Muddala Veeramallappa [M. Pentiah v. Muddala Veeramallappa, (1961) 2 SCR 295 : AIR 1961 SC 1107] , S.P. Jain v. Krishna Mohan Gupta [S.P. Jain v. Krishna Mohan Gupta, (1987) 1 SCC 191] , RBI v. Peerless General Finance & Investment Co. Ltd. [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424] , Tinsukhia Electric Supply Co. Ltd. v. State of Assam [Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709] , SCC at p. 754, para 118; UCO Bank v. Rajinder Lal Capoor [UCO Bank v. Rajinder Lal Capoor, (2008) 5 SCC 257 : (2008) 2 SCC (L&S) 263] and Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys [Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys, (2011) 11 SCC 334] .)”

147. The principle of purposive construction has been enunciated in various subsequent judgments of this Court. However, we would not like to burden this judgment with a plethora of citations. Suffice it to say, the law on the issue is very well crystallised.



148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."



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41. In the case on hand, much insistence has been laid on the language of Section 20(2) of the CGST Act to advance the submission that the legislative mandate is that the ISD shall distribute the credit of central tax or integrated tax charged on invoices received by him. Therefore, the expression "*credit available for distribution*" as placed in Rule 39(1)(b) of the CGST Rules would only mean that upon receipt of invoice, the ISD is required to distribute the credit in the same month in which it is received. Therefore, the Rule cannot be said to be ultra vires the enabling provision of Section 20 of the CGST Act, as the CGST Act itself mandates distribution upon receipt of invoice.

42. At the first blush, the argument appears to be attractive. However, on a deeper examination, such an interpretation would lead to a situation where the ISD, whether or not is entitled to avail ITC as provided under Section 16 of the CGST Act, would be required to distribute the credit as per the invoice alone.

43. The expression "*The Input Service Distributor shall*



W.P.Nos.27038 of 2025 etc

distribute the credit of central tax or integrated tax charged on invoices received by him” has to be interpreted keeping in view the other provisions contained not only in Section 20 of the CGST Act, but also Section 16 of the CGST Act and not in isolation.

44. It is one of the cardinal principles of interpretation that a provision contained in the statute has to be read as a whole and keeping in view the scheme of the Act and other provisions contained therein and not *de hors* the same. It is pertinent to note that in Section 20(1) of the CGST Act, it has been clearly provided that the ISD registered under clause (viii) of Section 24 shall distribute the ITC in respect of such invoices received.

45. The aforesaid expression is required to be meaningfully interpreted keeping in view the corresponding statutory scheme as to when, how and in what manner and upon fulfillment of which conditions, a registered person is entitled to credit of any input tax in respect of any supply of goods, services or both to him.

46. The use of the expression that distribution of credit shall



W.P.Nos.27038 of 2025 etc

be upon receipt of invoices does not mean that distribution has to take place even before the registered person is entitled to ITC under Section 16 of the Act. Such an interpretation will create absurdity and anomaly. It is relevant to note that Section 20 of the Act is placed in the statute after Section 16 of the Act. There is no discernible principle as to why, for the purposes of distribution of credit, Section 16 of the CGST Act has to be kept at bay. If that was the intention of the legislature, it could well be indicated by using the expression signifying the legislative intention as *"irrespective of whether or not the registered person is entitled to credit of any input tax in respect of supply of any goods or services or both to him"*. However, the legislature has not chosen to incorporate such expression.

47. There is no discernible guiding principle or rationale reflected from the scheme of the CGST Act as to what purpose would be served in providing for distribution without fulfillment of conditions for taking ITC as provided under Section 16 of the CGST Act.



W.P.Nos.27038 of 2025 etc

48. On the other hand, the interpretation that the expression “credit” used in Section 20 of the CGST Act is nothing but ITC and, therefore, what is intended to be distributed is ITC which the registered person/ISD is entitled to avail under the law and not a distribution mechanism even before entitlement under Section 16(2) of the Act.

49. The language of Section 20 of the CGST Act does not talk of distribution of “*invoice*”, but of “*credit*”. Merely because the expression used is distribution of credit upon receipt of “*invoice*”, it cannot be taken to mean that the legislative intention is to mandate distribution of credit indicated in the advice even before the registered person is entitled to claim ITC.

50. Rule 39(1)(b) of the CGST Rules which uses the expression “*credit available for distribution*”, therefore, has to be interpreted in consonance with principles of harmonious construction of Sections 16 and 20 of the CGST Act to mean that the “credit” which has become available in accordance with law. This, in turn, means that credit has become available in the manner



W.P.Nos.27038 of 2025 etc

provided under Section 16 of the CGST Act. Since the ITC can be availed and the registered person would be entitled to the same only upon fulfillment of various conditions incorporated therein, of which the receipt of invoice is the trigger point, the stage of distribution of ITC available will arrive only upon fulfillment of mandatory conditions prescribed under Section 16(2) of the CGST Act and not otherwise.

51. As a matter of fact, if we look into the scheme of the CGST Act read with the Rules and various forms which are required to be submitted at various stages, it will become clear that receipt of invoice is not envisaged to be the stage where credit is required to be distributed by the ISD.

52. As per Section 20 of the CGST Act, what is required to be distributed is "*credit*", which after amendment in Section 20 of the CGST Act with effect from 1.4.2025 would clearly mean "*input tax credit*". The expression "*input tax credit*" cannot be treated as the same as "*input*" or "*input tax*". It also cannot be said to be taxable value of supply. The statutory scheme of distribution under Section



W.P.Nos.27038 of 2025 etc

20 of the CGST Act is in respect of ITC. Therefore, it follows as a necessary corollary that before embarking upon distribution mechanism, ITC is available in terms of and in compliance with the statutory requirement of Section 16(2) of the CGST Act. This is so because, unless the conditions prescribed in Section 16(2) of the CGST Act are fulfilled, the registered person is not entitled to credit of input tax in respect of any supply of goods or services or both to him. What is mandated to distribute is "ITC". The distribution, therefore, is triggered only upon fulfillment of conditions incorporated in Section 16(2) of the CGST Act and not otherwise. Therefore, the credit available for distribution is that which is available in terms of provisions contained in Section 16(2) of the CGST Act. Input tax converts into credit only when following conditions are satisfied:

- (a) receipt of tax invoice [Section 16(2)(a)];
- (b) Reporting of the tax invoice in the outward supply returns by the supplier [Section 16(2)(aa) - only from 1.1.2022];
- (c) Receipt of service in question [Section 16(2)(b)];
- (d) Payment of tax to the Government [Section 16(2)]



W.P.Nos.27038 of 2025 etc

(c)]; and

(e) Furnishing return [Section 16(2)(d) read with Section 39(4)].

53. Section 21 of the CGST Act provides for the manner of recovery of credit distributed in excess. It clearly states that where the ISD distributes the credit in contravention of the provisions contained in Section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of Section 73 or Section 74 or Section 74A, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered. Therefore, in case the distributor distributes credit in contravention of Section 20 of the CGST Act, he is liable for penal consequences.

54. If we look into the description of “*tax invoice*” as stated in Section 31 of the CGST Act, it is clear that the tax invoice is required to show the description of quantity and value of goods, tax charged thereon. However, in view of the provision contained in



W.P.Nos.27038 of 2025 etc

Section 16(2) of the CGST Act, credit of the tax charged on the supply of goods can be taken only upon fulfillment of other conditions and mere tax invoice, by itself, is not sufficient in the eyes of law for a registered person to claim that he is entitled to ITC.

55. Rule 39(1)(a) of the Rules mandates that the ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these Rules. Form GSTR-6 requires details of Total ITC/Eligible ITC/Ineligible ITC to be distributed for tax period. Paragraph (3) thereof deals with ITC received for distribution. Paragraph (7) deals with ITC mis-matches and reclaims to be distributed in the tax period. It also requires details of redistribution of ITC distributed to a wrong recipient (plus/minus) and refund claimed from electronic cash ledger.

56. A chart showing forms and timelines under the CGST Act, for ready reference, has been submitted by the petitioners. Since that contains statutory timelines with regard to submission of



W.P.Nos.27038 of 2025 etc

various details in different statutory forms, it is reproduced herein below:

FORMS AND TIMELINES UNDER GST

Form	Particulars	Date	Relevant Provision
Form GSTR-1	Particulars of outward supplies made during the month (on a line-item/invoice-level basis) are to be reported. This form is to be filed by regular, non-ISD registrants. Certain supplies (with a turnover of not more than Rs.5 Cr.) have the option of filing this form quarterly.	10 th of the succeeding month	Section 37 read with Rule 59
Form GSTR-2A /6A	Particulars of outward supplies declared in Form GSTR-1 are auto-populated in this form and the same is visible to non-ISD registrants in GSTR 2A and to ISD registrants (GSTR 6A). While Form GSTR-2A is dynamic and keeps updating as and when suppliers declare their outward supply details.	Real-time (dynamic)	Rule 60
Form GSTR 2B	Form GSTR-2B is static and is made available on the day immediately following the due date of filing Form GSTR-1 return	11 th	Section 16(2)(aa) & Rule 36(4)
Form GSTR-6	Monthly return to be filed by ISD registrant declaring ITC available for distribution in that month and ITC distributed in that month. Table 5 of the return requires details of invoice of Invoice issued by ISD along with its no and date. The ITC distributed by an ISD registrant by way of Form GSTR-6 is reflected in Form GSTR-2B of	13 th	Section 39(4) read with Rule 65



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W.P.Nos.27038 of 2025 etc

Form	Particulars	Date	Relevant Provision
	<i>the recipient unit. However, the underlying third-party invoices. ITC of which is distributed by the ISD unit is not visible to the recipient unit in either Form GSTR-2A or Form GSTR-2B till 11th of the month succeeding the month in which the supplier issues the invoice.</i>		
Form GSTR-3B	<i>Monthly return to be filed by non-ISD registrants summarizing the outward supply details for the month (an aggregation of the line-item wise details declared in Form GSTR-1 return) and the ITC availed during the month.</i> <i>The GST liability is paid by way of this return</i>	20 th	Section 39(1) read with Rule 61

57. Moreover, the submission of learned counsel for the respondents that for distribution only the date of issuance of invoice is relevant cannot be accepted. Section 20(2)(b) of the CGST Act [prior to amendment] provided that the amount of the credit distributed shall not exceed the amount of credit available for distribution. This would show that the amount of credit entitled to be distributed is not the amount mentioned in the invoice, but the amount of credit which is eligible in terms of Section 16(2) of the CGST Act.



W.P.Nos.27038 of 2025 etc

After amendment, Rule 39(1)(b) of the CGST Rules provides that the amount of the credit distributed shall not exceed the amount of credit available for distribution.

Therefore, the submission of the respondents that distribution is to take place on issuance of invoice is based on incorrect assumption that the service is received when the invoice is issued.

58. It is clear that what is available for distribution is not the tax invoice, but the ITC. The registered person becomes entitled to the same upon fulfillment of conditions incorporated in Section 16(2) of the CGST Act and not before that.

59. Therefore, the expression "*the input tax credit available for distribution in a month*" contained in Rule 39(1)(a) of the CGST Rules has to be interpreted, construed and understood in the manner it is consistent with the statutory scheme of Section 16 read with Section 20 of the CGST Act and not otherwise. The said provision, if interpreted in the manner as has been argued by learned counsel for the respondents that what is required to be distributed in terms of provision contained in Section 20 of the



W.P.Nos.27038 of 2025 etc

CGST Act read with Rule 39 of the Rules is credit as stated in the tax invoice, even without fulfillment of conditions incorporated under Section 16(2) of the CGST Act, will be liable to be struck down as ultra vires Section 16(2) read with Section 20 of the enabling Act.

60. The said Rule only incorporates the expression "*the input tax credit available for distribution*". It does not, in turn, say that upon receipt of tax invoice, distribution mechanism shall be operated without fulfillment of the conditions of Section 16(2) of the CGST Act. Therefore, the rule is required to be interpreted in the manner that saves its constitutionality.

61. Consequently, the expression "*the input tax credit available for distribution in a month*", on rational, fair, and logical interpretation would only mean ITC available for distribution in a month upon fulfillment of the conditions incorporated in Section 16(2) of the CGST Act. In other words, the distribution mechanism is triggered only after completion of various stages and conditions incorporated in Section 16(2) of the CGST Act. Therefore, the



W.P.Nos.27038 of 2025 etc

requirement of distribution has to be accordingly construed to mean that it shall be in the month in which the registered person becomes entitled to ITC in terms of Section 16(2) of the CGST Act.

62. We finally conclude that, in its application, the provision contained in Sections 16 and 20 of the CGST Act read with Rule 39 of the CGST Rules are required to be applied as above. Therefore, present is not a case where Rule 39(1)(a) of the Rules is required to be declared ultra vires the enabling Act.

63. In view of the aforesaid conclusion arrived at, the other issues raised for consideration need not be answered.

64. The show cause notices issued in these two petitions in so far as the aspect relating to alleged contravention of delayed distribution are concerned, upon receipt of reply from the petitioners in two cases, shall require determination and appropriate order and conclusion of proceedings in the light of interpretation of the provisions of law, particularly Rule 39(1)(a) of the CGST Rules.



W.P.Nos.27038 of 2025 etc

65. In case the petitioners have not filed their reply, shall file their reply before the authority concerned within a period of two months. Upon submission of reply, the authority shall proceed to decide the matter in the light of the observations and conclusions drawn by us and interpretation of Sections 16 and 20 of the CGST Act and Rule 39(1)(a) of the CGST Rules.

66. In the result, the writ petitions are allowed in the manner and to the extent stated above. There shall be no order as to costs. Consequently, interim applications stand closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)

05.03.2026

Index : Yes
Neutral Citation : Yes
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W.P.Nos.27038 of 2025 etc

To:

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1. The Secretary, Union of India
Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.
2. The Secretary
State of Tamilnadu
Commercial Taxes and Registration
Department, Ezhilagam
PWD Estate, Chepauk
Chennai - 600 005.
3. Commissioner of Central Tax
and Central Excise
Audit - I Commissionerate, No 1775
Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extension
Chennai - 600 101.
4. The Secretary
Government of Puducherry
Commercial Taxes Department
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100 feet Road Ellapillaichavady
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W.P.Nos.27038 of 2025 etc

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

WP Nos.27038 and 28371 of 2025

05.03.2026