

**Can GST-ITC of recipient be denied
when Supplier's Registration is
cancelled retrospectively**



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Can GST-ITC of the recipient be denied when supplier's registration is cancelled retrospectively?

Obligations of the recipient for taking ITC by The Recipient u/s 16(2) –

a) He should have a tax invoice

aa) From October 2019 – The transaction should appear in the GSTR-2A/2B,

b) He should have received the goods or services

c) The tax should be paid to the Govt. and can be taken on self-assessment u/s 41

d) The recipient should file his returns

Allegations by the department – Non-compliance with Section 16(2)(c) of The CGST Act

The Issue of retrospective cancellation

Eg. The Recipient purchases the goods from the supplier on say 12th November 2018. He had followed the following procedure –

1. He had received the material
2. He has the tax invoice
3. The supplier's registration was active on 12th Nov 2018
4. The supplier had filed his GSTR-1 and his GSTR-3B for Nov'18 and the ITC reflected in the GSTR-2A/2B of the recipient
5. The recipient had the transporting documents like e-waybill, transporter's CN and has the weighment slips also in some cases
6. The recipient made payment to the supplier and transporter through bank a/c
7. The recipient filed his GSTR-3B and availed the ITC on this transaction

Now on 13th April 2022 the department cancelled the supplier's registration w.e.f. 01.07.2017 and disallowed the ITC to the recipient on this transaction alleging non-compliance with Sec 16(2)(c)

On 13th April 2022 the department cancelled the supplier's registration w.e.f. 01.07.2017 and disallowed the ITC to the recipient on this transaction alleging –

1. Supplier had not paid the taxes to the Govt. and taken fake ITC
2. Supplier had taken registration on fake documents
3. Hence there is a non-compliance with Sec 16(2)(c) by the recipient

Court's decision in the case of :

M/s GARGO TRADERS Vs THE JOINT COMMISSIONER, COMMERCIAL TAXES (STATE TAX) & ORS

If the recipient had complied with the following procedure, ITC would be available. Department should check the compliance with these -

1. Recipient had ensured that supplier was registered on the date of the transaction and filed its GSTR-3B for the month
2. Recipient should have additionally ensured that the supplier had taken the impugned transaction into consideration while filing its GSTR-3B. He may have ensured that by his GSTR-2A/2B auto-population.
3. Recipient should have documents like invoice/ bank payment advise/ e-waybill/ CN, etc
4. It should not be proved that recipient has connived with the supplier to defraud the Govt.
5. Most important – The recipient should have received the Goods/Services and paid for them.

By these it can be proved that recipient had proved the genuineness & identity of the suppliers. They cannot be required to do anything more than the possible (Doctrine of Impossible Performance)

- 1. M/s. LGW Industries Limited & Ors. –vs- Union of India & Ors. - 2021-VIL-868-CAL**
- 2. Balaji Exim –vs- Commissioner, CGST & Ors. - 2023-VIL-181-DEL**
- 3. DY Beathel Enterprises – Madras High Court**

THANK YOU



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