

M/s Sahil Enterprises v. Union of India and Others

Case number: WP(C) No. 688 of 2022

Citation: (2026) 154 GSTR 108 (Tri.)

Decision date: 6 January 2026

Bona fide purchaser ITC: Section 16(2)(c) upheld and read down; High Court judgment stayed by Supreme Court

Court: Tripura High Court

Bench: Hon'ble Chief Justice M. S. Ramachandra Rao and Hon'ble Mr. Justice S. Datta Purkayastha

Decision stage: Final High Court merits decision, partly allowing the writ; operation stayed by Supreme Court on 1 September 2026.

01 Facts of case and issues

Sahil, a proprietary rubber-products trader, bought goods from M/s Sentu Dey between July 2017 and January 2019 and paid it GST of Rs. 1,11,60,830. The supplier reported sales in GSTR-1 but filed nil GSTR-3B returns without remitting the collected tax. Revenue denied the purchaser's ITC and confirmed a demand with interest and penalty under Section 73.

Sahil challenged the adjudication dated 17 May 2022 and Section 16(2)(c), arguing that it could check GSTR-2A but could neither verify the supplier's GSTR-3B nor compel remittance. The issue was whether the payment-to-Government condition could constitutionally deny credit on these bona fide purchases.

Pinpoint: Original physical pp. 1–4, paragraphs 1–10; p. 8, paragraphs 16–18.

02 Discussion by Hon'ble Court

The Court accepted the undisputed practical inability to police the supplier's remittance. It considered equal treatment of bona fide purchasers and dishonest participants disproportionate under Article 14, and adopted reading down to preserve the provision's validity. It also relied on ITC's anti-double-taxation purpose, while acknowledging that express legislation can permit double taxation.

It extended the Delhi VAT reasoning in *On Quest Merchandising* and *Shanti Kiran* to CGST, considered *Arise India* and the Supreme Court's 9 October 2025 *Shanti Kiran* order, and followed the Gauhati approach. It expressly declined stricter views including *Patna's Aastha Enterprises*. These are distinct cases and statutory settings; the VAT orders do not themselves decide CGST Section 16(2)(c).

For Sahil specifically, tax payment to the supplier was undisputed. Revenue had invoked non-fraud Section 73, not Section 74, and attributed the retention of tax to the supplier. The Court therefore found the transaction bona fide and non-collusive. The protection excluded non-bona-fide, collusive or fraudulent transactions; it did not dispense with every other ITC condition.

Pinpoint: Original pp. 8–21, paragraphs 16–48, particularly 23–24, 34–35 and 39–47; pp. 22–23, paragraphs 53–56. Supreme Court *Shanti Kiran* order, paragraphs 2–7, pp. 1–5.

03 Judicial decision and operative relief

The writ was partly allowed. Section 16(2)(c) was held not to violate Articles 14, 19(1)(g), 265 or 300A, but was read down to protect bona fide purchases like Sahil's. The challenged order was set aside and Revenue directed forthwith to allow Rs. 1,11,60,830 of ITC. No costs were awarded; pending applications were disposed of. This was credit relief, not a cash refund or remand.

Paragraph 57(c) prints the order date as 7 May 2022; paragraphs 1, 8, 9 and 53 identify it as 17 May 2022. The discrepancy is retained. The subsequent Supreme Court stay suspends the High Court judgment's operation.

Pinpoint: Original p. 23, paragraph 57(a)–(e); date comparison with pp. 1, 3–4 and 22. Supreme Court order dated 1 September 2026, paragraph 4, physical p. 2.

04 In favour of

Purchaser at High Court: substantive ITC relief, with the provision upheld and read down. That judgment is subject to the verified Supreme Court stay.

Mixed constitutional outcome but substantive purchaser relief at High Court. The later stay is interim; it is neither an affirmance nor a final reversal on Sahil's merits.

Pinpoint: Original paragraph 57; Supreme Court orders dated 1 September 2026, paragraph 4, and 17 September 2026, p. 2.

05 AKHB REVIEW POINT

AKHB analysis: Do not present Sahil as operative nationwide protection or as striking down Section 16(2)(c). Preserve invoices, receipt and payment evidence, supplier-registration and return records, and the actual fraud allegations in the notice. Section 73 alone is not a universal certificate of bona fides.

Distinguish supplier non-payment from a mere return mismatch, and assess the statutory version applicable to the tax period. Address the Supreme Court stay and Bhandari's contrary reasoning in any reliance analysis. Preserve limitation and appeal rights rather than treating the pending Supreme Court proceedings as automatic protection from a separate demand.

Pinpoint: AKHB commentary based on original paragraphs 16, 19, 35 and 53–57; Supreme Court Bhandari order pp. 2–3 and Sahil stay order paragraph 4. Practical steps are analysis, not additional judicial directions.

Sources and limitations

Relevant provisions

CGST Act, 2017: Section 16(2)(c), Sections 37, 39, 73 and 74; Section 41 in the statutory extract. CGST Rules: Rule 36. Constitution: Articles 14, 19(1)(g), 265 and 300A. Delhi VAT Act Section 9(2)(g) is comparative authority.

Statutory note

The transactions predate the later wording reproduced in paragraphs 11 and 13. Section 16(2)(aa) commenced on 1 January 2022; clause (ba) and substituted Section 41 commenced on 1 October 2022. Rule 36(4) first applied from 9 October 2019. Do not retrospectively impose the quoted GSTR-2B regime on July 2017–January 2019 supplies. Current Section 41 provides reversal for supplier non-payment and re-avilment after payment, subject to prescribed requirements; period-specific application requires separate examination.

Treatment note

Checked 12 October 2026: the Supreme Court's 1 September 2026 order in Diary 33460/2026 with 34139/2026 stayed the challenged High Court judgments. Its 17 September order, SLP(C) 31573/2026 with 31578/2026, directed listing on 14 October 2026 without deciding merits or vacating the stay. Separately, Bhandari Scrap Traders (24 July 2026) expressly discussed Sahil, rejected parity between Delhi VAT and CGST, and gave reasons dismissing the Gujarat-based constitutional/read-down challenges. No grant of leave is recorded in Bhandari; it is not a final disposition of Sahil. These are bounded verified-order checks, not exhaustive citator or live-docket certification.

Scope of source review

All 23 physical original pages, including paragraphs 1–57, quoted statutes and authorities, footnotes and every operative clause, read in full and individually visually checked. Selected additional official sources were separately reviewed as identified below.

Source notes

No neutral citation is printed in the retained High Court original. The reporter citation is verified from footnote 1 on p. 2 of the Supreme Court's Bhandari order. The original's challenged-order date discrepancy is disclosed above. Paragraph 38 records statements made at the Bar about Gauhati appeals; those statements are not independently certified appellate outcomes here. Shanti Kiran's Supreme Court lead docket is Civil Appeal Nos. 2042–2047/2015, with connected Civil Appeal 9902/2017, rather than the connected number alone cited in Sahil's footnote 6. On 12 October 2026 the eCourts link returned an unavailable-order notice; the preserved 23-page corpus original, rather than a successful fresh download, is the source reviewed here.

Primary source

Source description: Complete 23-page official Tripura High Court judgment. The later Supreme Court stay and listing orders are separately identified below.

Official source: [Open source document](#)

Source pages: 23

Judgment author: M. S. Ramachandra Rao, C.J.

Outcome type: final high court merits

Additional source

Supreme Court: Sahil Enterprises stay order, 1 September 2026

Official source: [Open source document](#)

Pinpoint: Diary 33460/2026 with 34139/2026; paragraph 4, physical p. 2; repeated on p. 4. All four pages reviewed; first two pages are revised for appearance only.

Supreme Court: Sahil Enterprises listing order, 17 September 2026

Official source: [Open source document](#)

Pinpoint: SLP(C) 31573/2026 with 31578/2026; operative direction on p. 2. All two pages reviewed.

Supreme Court: Bhandari Scrap Traders, 24 July 2026

Official source: [Open source document](#)

Pinpoint: SLP(C) 23931/2026 with 24088/2026 and 24103/2026; pp. 2–3, unnumbered reasoning and dismissal; footnote 1 for Sahil reporter citation. All three pages reviewed.

Supreme Court: Shanti Kiran India, 9 October 2025

Official source: [Open source document](#)

Pinpoint: Civil Appeal Nos. 2042–2047/2015 with 9902/2017; paragraphs 2–7, pp. 1–5, especially paragraph 7. All seven pages reviewed.

Supreme Court: Arise India, 10 January 2018

Official source: [Open source document](#)

Pinpoint: SLP(C) 36750/2017; pp. 1–2, dismissal and liberty regarding non-bona-fide transactions. Both pages reviewed.

India Code: CGST Act as on 11 June 2026

Official source: [Open source document](#)

Pinpoint: Section 16 and amendment footnotes, physical p. 30; substituted Section 41 and commencement footnote, physical p. 50. Targeted statutory check.

CBIC Circular 183/15/2022-GST, 27 December 2022

Official source: [Open source document](#)

Pinpoint: Paragraph 2, physical pp. 1–2: Rule 36(4) restrictions commenced on 9 October 2019. Used for temporal context, not as relief applicable to admitted supplier non-payment.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the complete official High Court judgment and the identified additional official sources. No human legal review is claimed.

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Reserved date: 27 November 2025

Source checked: 12 October 2026