



## Tax alert: **Bombay High Court holds input tax credit available on receipt vouchers**

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Bombay High Court holds that input tax credit (ITC) is available to the recipient on receipt vouchers issued by the supplier in case of advances paid towards services.

### In a nutshell



For receipt of advances on services, supplier is required to issue receipt voucher to the recipient. Supplier is also required to discharge GST on the advances received.



One of the conditions to avail ITC is that the recipient should be in possession of a "tax invoice". Since receipt voucher is not a prescribed document, ITC would not be available on the same.



It was held that other documents evidencing the payment of GST liability, as recognized under the GST law, were available with the petitioner. Hence, ITC could be availed based on the receipt voucher issued by the supplier.



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## Bombay High Court holds that receipt voucher is a valid document for availment of input tax credit (ITC) under GST

### Facts of the case

- The petitioner is an unincorporated consortium of its two constituent companies, which was awarded a contract by the Mumbai Metropolitan Development Authority (MMRDA) for construction.
- A Consortium Agreement was signed between the petitioner and its constituent companies and later a Contract was also entered into between the MMRDA and the petitioner. The petitioner also obtained registration as per GST laws.
- Under the agreement between MMRDA and the petitioner, it was expressly mentioned that the parties agreed for an advance payment and such payment was made under 2 tranches which also included the GST component. The advance payments received from MMRDA were remitted by the petitioner to its constituents along with the GST amount.
- On receipt of the advances, the petitioner remitted the amounts to one of its constituent companies along with the GST, for which the constituent company issued a "receipt voucher" to the petitioner certifying the receipt of the advance amounts. The second tranche was also received in a similar manner.
- It later came to the knowledge of the petitioner that the advances, being a non-interest loan, did not fall within the GST net and they filed refund applications. However, the refund applications were denied.
- The main subject matter of the present proceedings was whether the advance payments received by the petitioner from MMRDA would qualify as "supply" and whether ITC can be claimed on the same. Further, the petitioner's eligibility to avail ITC is being taken away for 2 reasons:
  - That the petitioner is not in a position to comply with the condition of section 16(2)(a) of the Central Goods and Services Tax Act, 2017 (CGST Act), which provides that the petitioner should be in possession of a tax invoice; and
  - That the petitioner, although having deposited GST, would not be in a position to comply with the requirements of section 16(2)(1)(b) of the CGST Act, which provides that the petitioner has received the goods and/ or services at the time of receiving of the advance payment of which tax has been deposited.
- Based on the above, the petitioner filed a writ petition before the Bombay High Court seeking declaration *inter-alia* on availability of ITC on the basis of a receipt voucher.
- It was also prayed that certain provisions may be declared as violative of article 14 (equality before law), article 19(1)(g) (right to practice any profession or to carry on any occupation, trade or business), article 265 (no tax can be levied or collected in India except by authority of law) and article 300A (no person can be deprived of their property without the authority of law) of the Constitution of India.

### Observations and ruling

- On a bare reading of the agreement between the parties, it was observed that MMRDA would make advance payments which would be treated as interest free loans. Such advance payment was to be utilized for mobilization and design. It was noted that, merely because the agreement refers to such amount to be interest free loan, the petitioner neither demanded the advance as an interest free loan nor treated the same to be an interest free loan.
- On a plain reading section 7 of the CGST Act relating to scope of "supply", it was interpreted that, once an advance was received by the petitioner in the course of or in furtherance of the contract, it would necessarily amount to a supply attracting payment of GST.

- Also, the legislature, in its wisdom, has not only included, in terms of Section 7(1)(a) of the CGST Act, but further by insertion of clause (aa) in section 7(1) of the CGST Act, included such "supply of goods or services agreed to be made for consideration or a deferred payment for other valuable consideration", so as to fall within the ambit of expression "supply".
- Further, the petitioner also accepted that, as per the agreement, advance payment forms part of the consideration in relation to the contract in question. Thus, payment as received by the petitioner from the MMRDA would be subject to levy of GST.
- In the second question, petitioner's case was that, since the actual supply itself is not made, there is no need of the question regarding the applicability of section 7 read with section 9 (levy and collection of GST) and sections 12 (time of supply of goods) and 13 (time of supply of services) of the CGST Act.
- The Court took note of the reasons and observed that, the liability to pay tax in terms of sections 12 and 13(2) of the CGST Act had arisen on the date of receipt of payment by the petitioner from MMRDA. The issuance of an invoice is not the only necessary incident under sections 12 and 13 of the CGST Act. Hence, the petitioner's claim that advances received by the petitioner from MMRDA would fall outside the purview, was held as incorrect.
- On the aspect of restriction in availment of ITC in terms of section 16(2) of the CGST Act, it was observed that the petitioner had deposited tax and discharged its output tax obligations and complied with all other requirements except for Section 16(2)(b) of the CGST Act.
- The petitioner was in the process of generating supply. Hence, it was held that other documents evidencing the discharge of the GST liability and as recognized under section 31 of the CGST Act (tax invoice) were available with the petitioner. Therefore, the department was asked to carefully examine the transaction after considering the facts of the case.
- Also, there needs to be harmonious interpretation of provisions of section 13, read with the provisions of section 16 of the CGST Act. The intention underlying section 16(1) of the CGST Act is not only required to be effected, but also safeguarded by a meaningful and purposive reading of the provisions of Section 13(2) of the CGST Act, so as to apply the provisions of section 16(2)(1)(b) of the CGST Act, as it stands and intended by the legislature. Any interpretation otherwise would have a deleterious effect and cause disharmony in the working of these GST provisions.
- Further, ITC was denied on grounds of lack of supply since no invoice was available or issued. However, it was observed that the Department had submitted that "receipt voucher" is a tax paying document. Accordingly, rule 36 of the Central Goods and Services Tax Rules, 2017 (documentary evidence for availing ITC) cannot control the operation of section 31 of the CGST Act.
- Hence, it was held that the petitioner was entitled to the benefit of ITC.

### **Deloitte comments**

In case of services, even if advances were paid to the supplier (on which the supplier had discharged the GST liability), the recipient had to wait till the issuance of a tax invoice by the supplier, for availing ITC.

The ruling of the Bombay High Court paves way for availing ITC at the time of payment of the advance itself, which would help reduce working capital blockages, especially in the case of construction services.

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