

## Karnataka HC's interim-stay over ITC-recovery for delayed IGST-payment by Toyota Kirloskar on employee-secondment

Oct 30, 2023

Karnataka HC issues ad-interim order in case of Toyota Kirloskar Motor Pvt. Ltd. against the show causes notices issued by three different authorities, seeking to recover ITC of belated IGST paid on employee's secondment, alleging violation of the time limit prescribed u/s 16(4) of the CGST Act, 2017; Pursuant to SC verdict in Northern Operating, the Petitioner discharged IGST on reverse charge basis on the salaries paid to expatriate employees of the overseas group entities and claimed ITC on same; The Revenue authorities claimed that the ITC was availed beyond the period prescribed and accordingly issued the SCNs raising demand alongwith interest on belated IGST payments; Assessee before the writ court argues that the returns are filed after the orders of SC in Northern Operating and the provisions of Section 16(4) is not applicable to the case of Petitioner at all; In consideration thereof, HC stays the adjudication of the impugned SCNs until further orders while granting liberty to the Respondents to seek vacation of the interim order

The matter is before Justice B M Shyam Prasad.

Advocates Ravi Raghavan, Neethu James, Rohan Karia and Nischal K M are appearing on behalf of Petitioners, whereas Revenue is represented by CGC Vinay Venugopal, Govt Pleader Jyoti M. Maradi, Standing Counsel Amit Deshpande.

The expatriate employees of the overseas group entities of M/s. Toyota Kirloskar Motor Pvt. Ltd. ('Company') were deputed / seconded to the Company and the salary of such employees was paid by the Company. The Supreme Court in the matter of C.C., C.E. & S.T., Bangalore v. M/s. Northern Operating Systems Pvt. Ltd. held that deputation/secondment of employees is to be construed as provision of manpower supply service.

Based on the Supreme Court judgment in the matter of Northern Operating, [\[TS-216-SC-2022-ST\]](#) the Company raised self-invoices and accordingly discharged IGST on the salaries paid to the expatriate employees. Subsequently, the Company claimed Input Tax Credit of the IGST paid by them on reverse charge basis. In the above factual background, the Central Tax Department and the State Tax Department issued separate Show Cause Notices to the Company proposing to demand the input tax credit availed by the Company on the ground that the input tax credit has been availed beyond the time limit prescribed under Section 16(4) of the CGST Act, 2017. The said Show Cause Notices also proposed to demand interest on the belated payment of IGST in terms of Section 50(1).

The Company filed a writ petition before the HC challenging the SCNs issued by the Central Tax Department and the State Tax Department.

Petitioner submitted that Section 16(4) is not applicable to the case of Company at all.

Based on the submissions made, the High Court issued Notice and passed an Interim Order granting stay of adjudication of the impugned SCNs issued by the Central Tax Department and the State Tax Department.

### **GSTsutra Note:**

The SC in [Northern Operating Systems](#) case held that an arrangement whereby an overseas group company seconded employees to India based assessee, is exigible to Service Tax as Supply of Manpower under reverse charge mechanism.