

(2026) 02 KL CK 1705

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 23546 Of 2024, 24348 & 29087 Of 2025

M/s The South Indian Bank Ltd

APPELLANT

Vs

Additional Commissioner Of Central Tax & Central Excise

RESPONDENT

Date of Decision : 18-02-2026

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 16(3), 17, 17(2), 17(4), 73, 74
Central Goods and Services Tax (CGST) Rules, 2017 — Rule 38

Citation : (2026) 02 KL CK 1705

Hon'ble Judges : Ziyad Rahman A.A., J

Bench : Single Bench

Advocate : Shaji Thomas, Thomaskutty Sebastian, Gautham B. Baburaj, Sreelal N.Warrier, P.T.Dinesh, Abraham Joseph Markos

Final Decision : Disposed Of

Judgement

Ziyad Rahman A.A., J

1. In all these cases, the banking companies registered under the Companies Act, have approached this Court seeking various reliefs. The reliefs in W.P.(C) No.29087/2025 and W.P.(C) No.24348/2025, consist of the challenge against the show cause notices issued to the respective petitioners under Section 74 of the CGST Act. In W.P.(C) No.23546/2024, the challenge is raised against the Order-in-Original passed under Section 73 of the CGST Act. In all these cases, a common issue that arises, relates to the entitlement of the input tax credit, in respect of a portion of the tax component on which the petitioners have claimed depreciation under the provisions of the Income Tax Act.

2. The issue involved herein has to be decided, based on the interpretation to be given to Section 16(3), Section 17(2) and Section 17(4) of the CGST Act that relate to the claim of input tax credit and the restrictions in granting such reliefs.

3. In W.P.(C) No.29087/2025, which is taken as the leading case, the proceedings were initiated by issuing Ext.P1 show cause notice, based on the

information received by the officers of Directorate General of Goods and Service Tax Intelligence, Kochi Zonal Unit that, most of the banking companies are availing Input Tax Credit on the capital goods, in contravention of Section 16(3) and 17(4) of the CGST Act, 2017. Based on the said information, an investigation was initiated against the petitioner in the said writ petition which has branches all over India, for verification of the possible availing of the ineligible input tax credit.

4. During the process of such investigation, it was revealed that, the petitioner therein, for the purpose of availing the input tax credit, opted for Section 17(4) of the CGST Act, and availed 50% of the eligible input tax credit, and the remaining 50% of the same, was lapsed as per the said provision. As far as the 50% of the input tax credit lapsed as above is concerned, the same is capitalised to the respective assets and depreciation is claimed on the gross-block assets under the Income Tax Act, 1961. Thus, according to the Department of GST, since the petitioner claimed depreciation on the tax component, after availing the option of Section 17(4), the petitioner became ineligible to get the input tax credit for the entire tax component, in the light of the stipulations in Section 16(3) of the CGST Act. In the other writ petitions also, proceedings were initiated mainly on the said reason. In WP(C)23546/2024, the Order-in-Original passed, contains certain other irregularities, apart from the allegations referred to above.

5. Thus, as far as the challenge raised in these cases are concerned, the same is confined to the question of alleged wrongful availment of input tax credit in respect of the tax component, to which, the petitioners have claimed depreciation under the provisions of the Income Tax Act.

6. The respondents have filed a counter affidavit in W.P(C) No.29087/2025 and the same is adopted in other cases as well. In the said counter affidavit, the respondents have explained the circumstances and the reasons under/for which, the input tax credit availed by the petitioners becomes ineligible by virtue of Section 16(3).

7. I have heard Sri.G.Shivadas, learned Senior Counsel appearing for the petitioner, assisted by Sri.Shaji Thomas, Sri.Abraham Joseph Markos, learned counsel appearing for the petitioner, and Sri.P.T.Dinesh, learned Senior Standing Counsel for the respondents.

8. Before going into the disputed questions in this case, it is profitable to refer to the relevant statutory provisions, which are, Sections 16(3), 17(2) and 17(4) of the CGST Act. Those provisions read as follows:

16.(1)***

(2) ***

(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, the input tax credit on the said tax component shall not

be allowed.

17.(1)***

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) ***

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

PROVIDED that the option once exercised shall not be withdrawn during the remaining part of the financial year:

PROVIDED FURTHER that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

9. The procedure to be followed for availing the input tax credit, by exercising the option permitted under subsection (4) of Section 17 is contemplated under Rule 38 of the CGST Rules, which reads as follows:

38. A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section

(2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

(a) the said company or institution shall not avail the credit of,-

(i) the tax paid on inputs and input services that are used for non-business purposes; and

(ii) the credit attributable to the supplies specified in sub-section (5) of section 17;

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution [and the balance amount of input tax credit shall be reversed in FORM GSTR-3B].

10. The learned senior counsel for the petitioner, specifically pointed out that, as far as the option available to a banking company under Section 17(4) is concerned, the same enables them to claim Input Tax Credit up to 50% of the eligible Input Tax Credit, in lieu of the normal procedure contemplated under subsection (2) of Section 17. It is pointed out that Section 17(2) contemplates for availing Input Tax Credit subject to the restriction that, in cases where, the goods or services or both, are used by the registered person partly for effecting taxable supplies including zero-rated supplies under the CGST Act and partly for affecting exempted supply under the said Act, the allowable credit shall be, so much of the input tax, as is attributable to the taxable supply including zero rated supplies.

11. It is also pointed out that, while availing Input Tax Credit up to 50% of the actual entitlement, by virtue of Rule 38, the remaining 50% in respect of which the credit is not claimed, shall be reversed in FORM GSTR-3B. Thus, according to the learned senior counsel for the petitioner, as far as the non-availed portion of the tax component is concerned, the same cannot be subjected to the restriction contemplated under Section 16(3). This submission is made mainly in view of the fact that, the sole purpose behind the prohibition contained in Section 16(3) in availing the depreciation benefits, is to avoid the double benefit being availed by the tax payer; Input Tax Credit under the provisions of the CGST Act and the benefits of depreciation under the provisions of the Income Tax, 1961. However, as far as the non-availed Input Tax Credit under Section 17(4) of the Act, read with Rule 38 of CGST Rules is concerned, there cannot be a case of any double benefit being accrued to the petitioner, as no Input Tax Credit is claimed for the said amount, points out the learned senior counsel.

12. On the other hand, learned senior standing counsel for the respondent opposed the aforesaid contentions, by specifically relying upon the expressions used in Section 16(3), which according to him, provide for a complete prohibition on the tax component from claiming Input Tax Credit, for which the depreciation is claimed.

13. I have carefully gone through the relevant statutory provisions referred to the above and also examined the contentions raised from both sides. On carefully examining the words used in subsection (3) of section 16, it can be seen that, the prohibition contemplated is in respect of the tax component for which depreciation is claimed and it does not extent to the other portion of the tax component. The expression 'the said tax component' mentioned in the last portion of subsection (3) of section 16, gives a clear indication to that effect. It is not in dispute that, the purpose of subsection (3) of Section 16 is to avoid double benefit being availed by the tax payer. As rightly pointed out by the learned senior counsel for the petitioners, when it comes to the case of a portion of the

tax towards the 50% of the Input Tax, in respect of which no credit was availed under the CGST Act, by claiming depreciation under the Income Tax Act, for that portion, there cannot be any double benefit for the tax payer. The word 'the said tax component' used in Sub Section 3 is of crucial importance, and to understand the true purpose and meaning of the same, the scheme of availing the Input Tax Credit as is discernible from Section 17(2) and 17(4) is also to be examined.

14. When it comes to Sec.17(2) of the Act, it specifically contemplates that, in cases where, the registered person is using goods and services for effecting taxable supplies and exempted supplies, the credit shall be restricted to input tax as is attributable to the taxable supplies alone. Thus, if Sec.16(3) is read with Sec.17(2), it is very clear that, as far as the depreciation claimed for the exempt supplies are concerned, the prohibition contemplated under Sec.16(3) would not be attracted. Subsection (4) of Sec.17 is a special provision envisaged for the banking and financial institutions, taking note of the peculiar nature of the business they are engaged in. Apparently, considering the practical difficulties for the banking companies, in segregating the taxable and exempt supplies as contemplated under Sec.17(2), an option has been provided to them, to avail a portion of the eligible input tax, as credit, to avoid such difficulties.

15. Thus, 50% has been fixed as the eligible input tax credit, instead of bifurcating the taxable supplies and exempted supplies, as contemplated under Sec.17(2). When we try to understand the scheme of such provisions and the availment of input tax credit, as contemplated in the said provision by fixing 50% as the eligible input tax credit in Sec.17(4), it can be seen that, as per the same, a fiction has been created to the effect that, the remaining 50% is intended to cover the exempt supplies to which input tax credit is not attributable as provided in subsection (2) of Sec.17.

16. Therefore, when the eligibility of input tax credit is restricted to 50% by virtue of that deeming fiction, the applicability of Sec.16(3) and the expression "the said tax component" referred to therein, has to be understood with reference to the input tax credit actually available to the taxpayer concerned. It is to be noted that, since it is an option granted to the banking company, either to adopt the method of availing of input tax credit as contemplated under subsection (2) of Section 17 or to avail the same on 50% of the input tax, as contemplated under subsection (4) of Section 17, the 50% of the input tax, for which no credit is available, was treated at par with the value of the exempt supplies contemplated under subsection (2) of Section 17. Therefore, when the depreciation claimed for the exempt supplies does not attract the prohibition contemplated under Sec.16(3), then imposing such a restriction, in respect of the un-availed portion of the input tax credit by opting for subsection (4) of section 17, would be an unreasonable classification.

17. Therefore, the meaning of "the said tax component" as contemplated in subsection (3) of Section 16 has to be understood, with reference to the scheme of availing of input tax credit as explained above. This would mean that, as far as

prohibition contemplated under Sec.16(3) in availing the input tax credit is concerned, it could be made applicable only in respect of the "the said tax component" for which the depreciation is claimed by the tax payer and, such restriction cannot be brought into force, in respect of the portion of the input tax for which no depreciation is claimed, as contemplated under Sec.17(4). In other words, the provisions referred to above cannot be interpreted to mean that, the claiming of the depreciation for 50% of the tax component for which no input tax credit availed, would take away the benefit of input tax credit for the entire tax component. In fact, a prohibition in claiming the input tax credit would be applicable only to the portion of the tax component for which depreciation was claimed and the portion of the tax component for which, no depreciation was claimed, cannot be subjected to the prohibition from availing input tax credit. Yet another factor to be noted while interpreting sub-section (3) of Section 16 and sub-section (4) of Section 17 of the Central Goods and Services Tax Act, 2017 is that, if an institution under Section 17(4) avails its 50% eligible Input Tax Credit, the rest shall become lapsed. This means that the unavailed Input Tax Credit cannot have the nature of a tax component, for the purpose of taking credit. Since the unavailed credit under Section 17(4) becomes lapsed, it will not attract the prohibition under Section 16(3), particularly because, depreciation has to be claimed upon the tax component of the cost of capital goods. Therefore, I do not find any sustainable reason to uphold the reason based on which, the show cause notices and the order were issued to the petitioners, as the same are beyond the scope of Sec.16(3) of the CGST Act.

In such circumstances, I am of the view that an interference is required in the impugned notices and the order in these cases. Accordingly, these writ petitions are disposed of, quashing Ext.P1 show cause notices in W.P.(C) No.29087/2025 and W.P.(C) No.24348/2025. In W.P.(C) No.23546/2024, Ext.P1 Order-in-Original is quashed, to the extent the prohibition is imposed under Sec.16(3) of the CGST Act, in respect of the 50% of the tax component, for which the petitioners did not avail the depreciation. The learned Senior counsel for the petitioner further pointed out that, as far as Ext.P1 Order-in-Original in W.P.(C) No.23546/2024 is concerned, the same includes certain other disputes as well, for which, they may be permitted to invoke the statutory remedies. Therefore, it is clarified that, it shall be open to the petitioner in the said writ petition to invoke the statutory remedy of appeal against Ext.P1 before the appropriate forum, and taking note of the fact that, this writ petition was pending since 27.06.2024, it is ordered that, the period from the date of filing of the writ petition, till the date of receipt of the certified copy of this judgment, shall be excluded, while calculating period of limitation for filing appeal against Ext.P1.