Chief Commissioner of Central Goods and Service Tax & Ors. Vs. Safari Retreats Private Ltd. & Ors.

Eligibility of Input Tax Credit (ITC) on construction of immovable property used for renting (Section 17(5)(c) & (d), Section 16, CGST Act, 2017 – Blocked Credit, Constitutional Validity, ITC on Immovable Property)

Date of Order: October 3, 2024
Case Law No: GIB- SC-2024-06
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Case Facts:
The respondent constructed a shopping mall for leasing purposes and paid GST on inputs like materials and services used in construction, accumulating substantial ITC. The department denied ITC relying on Section 17(5)(d), which blocks credit for construction of immovable property. The Orissa High Court read down the provision and allowed ITC, holding denial would defeat GST objectives. The Revenue challenged this before the Supreme Court along with similar matters questioning the constitutional validity of Section 17(5)(c) and (d).

Court Decision:
The Supreme Court examined the scheme of the CGST Act and held that ITC is a statutory right subject to conditions and restrictions under the Act. Section 17(5)(c) and (d) clearly restrict ITC on construction of immovable property (other than plant and machinery), and such restriction must be interpreted strictly.

The Court upheld the validity of the provisions and rejected the interpretation adopted by the High Court. It held that:

- A taxing statute must be interpreted strictly based on plain language.
- ITC cannot be claimed contrary to express statutory restrictions.
- The legislature is competent to restrict ITC and such restriction does not violate constitutional provisions.
- The expression “plant or machinery” cannot be expansively interpreted to include buildings like malls merely to claim ITC.

Accordingly, the Supreme Court set aside the High Court judgment and held that ITC is not available on construction of immovable property used for renting under Section 17(5)(d).

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Cases Referred by Court:

- *Eicher Motors Ltd. v. Union of India*
- *Bharat Sanchar Nigam Ltd. v. Union of India*
- *Shreya Singhal v. Union of India*
- *Union of India v. Bharti Airtel Ltd.*
- *Federation of Hotel & Restaurant Association of India v. Union of India*
- *R.K. Garg v. Union of India*
- *Twyford Tea Co. Ltd. v. State of Kerala*
- *Nitdip Textile Processors Pvt. Ltd.*
- *P. Laxmi Devi v. State of Andhra Pradesh*
- *Indore Development Authority v. Manoharlal*
- *ALD Automotive Pvt. Ltd. v. Commercial Tax Officer*
- *Hari Krishna Bhargav v. Union of India*
- *Joseph Shine v. Union of India*
- *Commissioner of Customs v. Dilip Kumar & Co.*
- *Sneh Enterprises v. Commissioner of Customs*
- *Vegetable Products Ltd.*
- *R.S. Raghunath v. State of Karnataka*
- *Union of India v. VKC Footsteps India Pvt. Ltd.*

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