Esnp Property Builder And Developers Private Limited v. State Tax Officer (ST), Group-V & Others

Whether Input Tax Credit (ITC) on goods/services used for construction of immovable property intended for leasing can be denied under Section 17(5)(d) of the CGST Act, without considering the ratio of the Supreme Court in Safari Retreats.

Date of Order:	August 28, 2026
Case Law No:	GIB-MHC-2026-109
Source:	GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

In W.P. Nos. 21432 and 21433 of 2026, assessment orders were challenged whereby the petitioner's claim for ITC relating to **construction-cum-leasing services** was rejected. The petitioner had relied upon the Supreme Court judgment in *Chief Commissioner of CGST and Others v. Safari Retreats Pvt. Ltd. and Others*, particularly its interpretation of construction undertaken for leasing or licensing purposes vis-à-vis construction on the taxable person's own account. The petitioner contended that this judgment had not been properly considered while passing the assessment orders.

In W.P. No. 22392 of 2026, the petitioner sought re-credit/refund of amounts debited from its electronic cash and credit ledgers pursuant to the assessment orders. It was contended that recovery was made without the prior intimation contemplated under **Rule 142B(1)** and without allowing the prescribed seven-day period.

Court Observation

The Court noted that the Supreme Court in *Safari Retreats* had held that construction cannot be regarded as being on the taxable person's own account where it is **intended for sale, lease or licence**. The Court observed that, in the factual context where the inputs were procured for construction and leasing, the proper officer ought to have considered the Supreme Court's judgment before recording findings.

The Court found that the impugned assessment orders instead recorded that leasing could not convert otherwise blocked ITC into eligible credit, but these findings were entered **without considering the ratio of the Supreme Court judgment in *Safari Retreats***. Consequently, the Court held that reconsideration of the assessment orders was warranted.

With regard to recovery, the Court examined **Rule 142B** and observed that the proper officer is required to intimate the person in default regarding the recoverable amount and provide **seven days from the date of intimation** for payment. Recovery proceedings under the specified rules can be initiated only if the amount remains unpaid after expiry of that period. The Court found that this requirement had not been complied with in the present cases.

Final Verdict

The assessment orders challenged in **W.P. Nos. 21432 and 21433 of 2026 were set aside and the matters were remanded for reconsideration**. The respondents were directed to provide a reasonable opportunity to the petitioner and issue fresh orders within **five months** from the date of receipt of the Court's order.

In W.P. No. 22392 of 2026, considering the non-compliance with Rule 142B and the fact that the underlying assessment orders had been set aside, the Court directed the respondents to **re-credit/refund the amounts debited from the electronic cash or credit ledgers to the corresponding ledger within two weeks** from receipt of the order. The writ petitions were accordingly disposed of, with no order as to costs.

Case Referred by Court

Chief Commissioner of CGST and Others v. Safari Retreats Pvt. Ltd. and Others — Supreme Court, reported in **(2024) 121 GSTR 184 (SC)**.