IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-08-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP Nos. 21432, 21433 & 22392 of 2026
and WMP Nos. 23198, 23199, 23200, 23201, 34007, 38367, 34008, 34009, 38370 & 38372 of 2026

WP No.21432 of 2026

Esnp Property Builder And Developers Private Limited, Represented By Its Authorised Signatory, Mr. Abhishek Agrawal,
181/183, Near Vels University,
200 Feet Pallavaram, Thoraipakkam Radial Road,
Zamin Pallavaram Kancheepuram District,
Chennai, Kancheepuram,
Tamil Nadu, 600117

..Petitioner(s)

Vs

1. State Tax Officer (st), Group-V
   Chengalpattu Intelligence Division,
   No.870/2A, 2nd Floor, kancheepuram High road, Thimmavaram, Chengalpattu-603 101

2. State Tax Officer (st), Group VI
   Chengalpattu Intelligence Division,
   No.870/2A, 2nd Floor, kancheepuram High road, Thimmavaram, Chengalpattu-603 101

3. Joint Commissioner (state Tax) (intelligence)
   Chengalpattu Intelligence Division,
   No.870/2A, 2nd Floor, kancheepuram High road, Thimmavaram, Chengalpattu-603 101

..Respondent(s)

WP No. 21433 of 2026

Esnp Property Builder And Developers Private Limited, Represented By Its Authorised Signatory, Mr. Abhishek Agrawal,
181/183, Near Vels University,
200 Feet Pallavaram, Thoraipakkam Radial Road,
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   No.870/2A, 2nd Floor, kancheepuram High road, Thimmavaram, Chengalpattu-603 101

..Respondent(s)

WP No. 22392 of 2026

Esnp Property Builders And Developers Private Limited, Represented By Its Authorised Signatory, Ms.Lata Vishnoi M, 181/183, Near Vels University, 200 Feet Pallavaram, Thoraipakkam Radial Road, Zamin Pallavaram Kancheepuram District, Chennai, Kancheepuram,
Tamil Nadu, 600117

..Petitioner(s)

Vs

1. Assistant Commissioner (st)
   Pallavaram Assessment Circle

Room No. 305 3rd Floor, Mylapore Taluk Office, R.A.Puram, Greenways Road, Chennai 600028.

2. State Tax Officer (st) Group - V
Chengalpattu Intelligence Division
No.870/2A 2nd Floor, Kancheepuram High Road, Thimmavaram Chengalpattu 603 101.

3. State Tax Officer (st) Group - VI
Chengalpattu Intelligence Division
No.870/2A 2nd Floor, Kancheepuram High Road, Thimmavaram Chengalpattu 603 101.

4. Joint Commissioner (state Tax) (intelligence)
Chengalpattu Intelligence Division
No.870/2A 2nd Floor, Kancheepuram High Road, Thimmavaram Chengalpattu 603 101.

5. Commissioner Of Commercial Taxes
Commercial Taxes Department
Ezhilagam Chepauk Chennai 600005.

..Respondent(s)

PRAYER in W.P.No.21432 of 2026: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the Order-in-Original with Summary in Form GST DRC-07 bearing Ref. No. ZD3302261988433 dated 23.02.2026, passed by the 1st Respondent, and to quash the same to the extent prejudicial to the petitioner.

PRAYER in W.P.No.21433 of 2026: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the Order-in-Original with Summary in Form GST DRC-07 bearing Ref. No. ZD330226199082G dated 23.02.2026, passed by the 1st Respondent, and to quash the same to the extent prejudicial to the petitioner.

PRAYER in W.P.No.22392 of 2026: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents herein their men, agents, servants, subordinates or any other person or persons claiming through them, or authorised by them, to re-credit or refund the amount of Rs. 10,09,208/- to GST Electronic Cash Ledger and Rs.9,52,28,986/- to the GST Electronic Credit Ledger of the Petitioner.

For Petitioner(s): in all WP's	Mr.Raghavan Ramabadran
For Respondent(s): in all WP's	Ms. G. Dhana Madhri, Special Government Pleader (Tax)

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COMMON ORDER

In W.P.Nos.21432 & 21433 of 2026, assessment orders rejecting the petitioner's claim for Input Tax Credit (ITC) on constructions-cum-leasing services are challenged.

2. Miscellaneous petitions were filed by the petitioner to amend the prayer so as to take within its fold orders issued in Form GST DRC 07 pursuant to the detailed orders impugned in these two writ petitions. Upon considering the same, it follows that these are clearly orders issued pursuant to the impugned detailed assessment orders. Therefore, the request for amendment is accepted and the prayers shall be amended to include the DRC 07 orders referred to in the miscellaneous petitions.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the petitioner had relied on the judgment of the Supreme Court in *Chief Commissioner of CGST and others v. Safari Retreats Pvt. Ltd. and others reported in (2024)121 GSTR 184 (SC) [Safari Retreats]*. In particular, he pointed out that the ratio of the said judgment with regard to construction on a taxable persons own account *vis-a-vi*s construction for leasing or licensing purposes was highlighted by the petitioner. Referring to the operative paragraph of the impugned order, he points out that this contention was disregarded and that the finding recorded in the order is in the teeth of the ratio of the Supreme Court judgment.

4. In response, Ms.G.Dhana Madhri submits that the judgment in *Safari Retreats* was not expressly dealt with in the operative paragraphs in view of the

amendment to Section 17(5), whereby the expression "plant or machinery" was amended to read as "plant and machinery".

5. In *Safari Retreats*, in relevant part, the Supreme Court held as under:

> *"32. Clause (d) of Section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude from the purview of sub-section (1) of Sections 16 and 18, goods or services or both received by a taxable person to construct an immovable property on his own account. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account.* ***Construction is said to be a taxable person's "own account" when (i) it is made for his personal use and not for setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license."***

6. As can be seen from the above extract, the Supreme Court has explained that ineligibility in relation to construction would arise where the construction is for the personal use of the taxable person or where it is used by the person carrying out the construction as the setting or premises from where his business is carried out. By contrast, the Supreme Court has held that

construction cannot be said to be for the taxable persons own account, if such construction is intended for sale, lease or license. The specific contention of the petitioner appears to be that inputs were procured for purposes of construction and leasing. In this factual context, the proper officer should have dealt with the Supreme Court's judgment before entering findings.

7. Instead, the following findings were entered:

> *"The expression "on own account" under Section 17(5)(d) includes situations where a registered person constructs property for ownership, control and capatilization, irrespective of subsequent commercial usage.*
>
> *The Act does not carve out any exception permitting ITC merely because the completed property is rented or leased.*
>
> *Leasing is an independent outward taxable supply arising only after completion of construction and cannot retrospectively alter the nature of inward supplies used during construction.*
>
> *Acceptance of the Notice's interpretation would render Section 17(5)(d) otiose and defeat the legislative intent of blocking credit on immovable property.*
>
> *Accordingly, the argument that leasing converts otherwise blocked credit into eligible credit is rejected."*

8. Since the above findings were entered without considering the ratio of the judgment of the Supreme Court in *Safari Retreats*, re-consideration is warranted. Towards that end, the orders impugned in W.P.Nos.21432 & 21433

of 2026 are set aside and these matters are remanded for re-consideration. After providing a reasonable opportunity to the petitioner, fresh orders shall be issued within ***five months*** from the date of receipt of a copy of this order.

9. In W.P.No.22392 of 2026, the petitioner has prayed for refund of amounts debited from its electronic cash and credit ledgers pursuant to the assessment orders impugned in the other writ petitions.

10. Adverting to Rule 142B of applicable GST Rules, learned counsel for the petitioner contends that recovery measures cannot be initiated unless notices are issued in terms of sub-rule (1) and the taxable person fails to make payment within the 7 day period prescribed therein. Turning to the facts of the case, he submits that the three month period expired on 23.05.2026 and that the petitioner's cash and credit ledgers were debited within three days therefrom. Since such debiting was not preceded by a notice under Rule 142B(1), he submits that the petitioner is entitled to refund of amounts debited.

11. Rule 142B reads as under:

"***142B. Intimation of certain amounts liable to be recovered under section 79 of the Act***

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained

*unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in **FORM GST DRC-01D**, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.*

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3)Where any amount of tax or interest specified in the intimation referred to in subrule(1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.]

12. Sub-rule(1) prescribes that the proper officer shall intimate the person in default to pay amounts that become recoverable under Section 79 and have remained unpaid, and call upon said person to pay the amount along with applicable interest within 7 days from the date of intimation. As per sub-rule (3), recovery measures in accordance with rules mentioned therein may be taken only if the amounts remain unpaid after expiry of the 7 day period prescribed in sub-rule(1). The sequence of dates and events in the cases at hand reveal that this requirement was not complied with. In any event, the assessment orders pursuant to which such measures were taken have also been set aside.

Considering these aspects, the respondents are directed to re-credit or refund the amounts debited from the petitioner's electronic cash or credit ledgers, as the case may be, to the corresponding ledger within ***two weeks*** from the date of receipt of a copy of this order.

13. These writ petitions are disposed of on the above terms. There shall be no order as to costs. Consequently, the connected W.M.P.Nos.23198, 23199, 23200, 23201, 34008, 34009, 38370 & 38372 of 2026 are closed and W.M.P.Nos.34007 & 34367 of 2026 are ordered.

28-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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