
CHIEF COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX V. SAFARI RETREATS PRIVATE LTD

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INTROUDCTION

In the changing environment of the Goods and Services Tax (GST) system, Input Tax Credit (ITC) serves a crucial function in facilitating the uninterrupted transfer of credit throughout the supply chain. The uninterrupted transfer of ITC is also vital to prevent any cascading tax implications. Nevertheless, contrary to the principles aimed at preventing cascading effects, some inputs and services are deliberately excluded or restricted from qualifying for ITC, referred to as "Blocked Credits," which has ignited considerable discussion and legal disputes, especially in relation to the construction of immovable properties.

In the matter of Chief Commissioner of Central Goods and Service Tax v. Safari Retreats Private Ltd¹ the Supreme Court rendered a noteworthy judgment that carries considerable consequences for enterprises engaged in the construction and leasing of immovable properties. The case revolved around the issue of whether input tax credit on goods and services utilized in the construction of immovable property, such as shopping centers, should be permitted when the property is subsequently employed for rental purposes, which constitutes a taxable supply under the Goods and Services Tax.

BACKGROUND

The petitioner, Safari Retreats Private Ltd., is a corporation involved in the construction of shopping malls and subsequently leasing these constructed units to tenants. The company has accrued Input Tax Credit (ITC) on goods and services utilized in the construction of these

¹ 2024 SCC ONLINE SC 2691

malls, such as cement, steel, and professional services. However, when the company attempted to apply the ITC against the Goods and Services Tax (GST)² owed on rent, the authorities rejected the claim, referencing the restriction under Section 17(5) (d) of the CGST Act, 2017. This provision prohibits the utilization of ITC on goods and services employed in the construction of immovable property unless it pertains to plant and machinery³.

The petitioner contested the embargo pursuant to Section 17(5)(d), contending that the Input Tax Credit (ITC) should not be restricted when immovable property is utilized for additional taxable supplies, such as rental or lease activities⁴.

ISSUES

The main issues before the Supreme Court were:

- 1. Interpretation of Section 17(5)(d):** Whether the phrase "on his own account" used in the Section 17(5)(d) of the CGST Act, 2017 applies to immovable property constructed for letting out rather than for personal use?
- 2. Constitutional Validity:** Whether the restriction on ITC violates Articles 14 and 19(1)(g) of the Constitution by discriminating against businesses that construct immovable property for taxable purposes?
- 3. Cascading Effect of Taxes:** Whether denying ITC leads to double taxation, as GST is paid both on input used in construction and on rent collected from tenants?

SUBMISSIONS BY THE PETITIONER

The Petitioner contended that Section 17(5)(d) ought to be interpreted in a manner that permits Input Tax Credit (ITC) for construction activities performed for the purpose of leasing, given

² Annapoorna (2025) Goods and Service Tax: What is GST in India? Indirect Tax Law Explained, available at: <https://cleartax.in/s/gst-law-goods-and-services-tax> (Last accessed on 26th March 2025)

³ Chief Commissioner of Central Goods and Service Tax and Ors. v. M/S Safari Retreats Private Ltd. & Ors. vide Civil Appeal No. 2948 of 2023 SC dated 03.10.2024 available at: <https://taxo.online/judgment/chief-commissioner-of-central-goods-and-service-tax-ors-v-s-m-s-safari-retreats-private-ltd-ors-vide-civil-appeal-no-2948-of-2023-dated-03-10-2024-supreme-court/> (Last accessed on 26th March 2025)

⁴ Safari Retreats Pvt. Ltd. v. Commissioner-Bbsr Commissionerate on 17 December 2024, available at: <https://indiankanoon.org/doc/70212061/> (Last accessed on 26th March 2025)

that the rental income is liable to Goods and Services Tax (GST)⁵. The denial of ITC results in a cascading impact, wherein taxes are incurred on both inputs and outputs, which is in opposition to the objective of GST legislation to facilitate uninterrupted credit and to prevent the cascading effect of double taxation.

The petitioner further asserted that the restriction contravenes the principle of equality under Article 14, as it places businesses engaged in constructing properties for rental on the same plane as those developing properties for resale, for which no Input Tax Credit (ITC) is accessible, a situation they claimed is arbitrary and unreasonable.

SUBMISSIONS BY THE RESPONDANT

The Department, represented by the Additional Solicitor General, advocated for the rejection of ITC, contending that the establishment of immovable property disrupts the tax credit chain. They asserted that ITC constitutes a statutory benefit, rather than a fundamental right, and may be confined in accordance with legislative intent to avert misuse. Furthermore, they defended the classification under Section 17(5)(d) founded on intelligible differentia, which distinguishes between the construction of immovable property for sale and for rental, thereby maintaining a rational connection with the objectives of the GST Act.⁶

DECISION HELD

The Supreme Court upheld the Revenue's position that Section 17(5)(d) restricts the input tax credit (ITC) for goods and services utilized in the construction of immovable property, even in instances where the property is leased. The Court determined that this limitation aligns with legislative intent to avert the misuse of ITC and does not contravene constitutional provisions.

Nevertheless, the Court also offered a nuanced interpretation, indicating that ITC may be accessible if the immovable property is classified as 'plant or machinery' under the CGST Act⁷.

⁵ Ranjeet Kumar Ambast, Assessing the Impact of GST on Profitability available at: <https://journalajebea.com/index.php/AJEBA/article/view/1291> (2024) (last accessed on 26th March 2025)

⁶ Maruthi M.V., A comprehensive analysis of goods and services tax (GST) in India, (2020) available at: <https://digitalcommons.du.edu/irbe/vol4/iss2/62/> (last accessed on 20th March 2025)

⁷ Arun Kumar Deshmukh, et.al., Goods and Services Tax (GST) Implementation in India: A SAP-LAP-Twitter Analytic Perspective (2022) available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC8790948/> (Last accessed on 21st March 2025)

Nonetheless, commercial properties, such as shopping malls, generally do not qualify under this category unless they satisfy the functionality test.⁸

ANALYSIS

THE FUNCTIONALITY TEST:

One of the significant features of the Safari Retreats judgment is the implementation of the 'functionality test' to ascertain whether a building or structure meets the criteria of 'plant' under the CGST Act for the purpose of claiming ITC. The test centers on the function the building serves within the Petitioner's business.⁹

If the structure exceeds the definition of merely a 'setting' for conducting business and fulfills a critical function, such as a warehouse tailored for business requirements or a cold storage facility, it may be classified as 'plant' under Section 17(5)(d). Consequently, this permits businesses to claim ITC on the goods and services utilized in the construction of such structures.

The Court distinguished the term 'plant or machinery' in Section 17(5)(d) from 'plant and machinery' as defined in the explanation to Section 17. While the term 'plant' is not explicitly defined in the GST law, its interpretation must be derived from commercial parlance and trade practices. For example, structures like dry docks, insulated walls in freezing chambers, or specialized warehouses could qualify as 'plant' if they play a critical role in business operations.

JUDICIAL PRECEDENTS ON THE DEFINITION OF PLANT:

The Court referenced numerous judicial precedents from income tax law to substantiate its interpretation. For example, in previous cases, sanitary fittings or pipelines installed in hotels were classified as 'plant' due to their necessity for the hotel's operations. Likewise, insulated walls for freezing chambers and dry docks utilized in ship manufacturing have been recognized

⁸ Chief Commissioner of Central Goods and Services Tax (GST) v. M/s Safari Retreats Private Ltd. (2024 (10) TMI 286)

⁹ Cajoydeb Bhattacharya, Input Tax Credit on Construction cost in relation to immovable property-an analysis based upon the recent Supreme Court's Judgment in Safari Retreat's Case (2024), available at: https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=13068 (Last accessed on 18th March 2025)

as 'plant' based on their functionality in the relevant businesses.

However, the Court elucidated that not every building can be categorized as 'plant'. 'For example, a hotel building equipped with specialized fittings may not be eligible unless the entire structure fulfils a specific operational function beyond merely providing a venue for business.

APPLICABILITY OF FUNCTIONALITY TEST:

The Supreme Court underscored that the determination of whether a building qualifies as 'plant' is a matter of fact that must be assessed based on the business requirements in each instance. For instance, if a building is designed and erected to fulfil the distinct technical specifications of a business, it may be categorized as 'plant'. 'This classification permits the Input Tax Credit (ITC) on the Goods and Services Tax (GST) levied on the goods and services utilized in the construction of such a building.

This principle offers chances for companies that build specialized structures—like warehouses, prefabricated buildings, cold storage facilities, or silos—to evaluate if their buildings might be categorized as 'plant' under the functionality test, thus enabling them to assert ITC.

INTERPRETATION OF PHRASE 'ON HIS OWN ACCOUNT'

Another important element of the ruling is the understanding of the expression 'on his own account' specified in Section 17(5)(d). The Court explained that this term pertains to situations in which the property is built for personal use instead of for the purpose of offering services, renting, or leasing. As a result, if the property is meant for sale, lease, or rental purposes, it does not meet the criteria for the 'on his own account' exception, and ITC might be accessible if the structure is classified as 'plant.'

However, the Court observed some uncertainty concerning whether the exceptions pertaining to 'plant or machinery'¹⁰ and 'on his own account' in Section 17(5)(d) operate independently or

¹⁰ General information for GST/HST Registrants, Canada Revenue Agency, available at: <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4022/general-information-gst-hst-registrants.html> (Last accessed on 19th March 2025)

together, especially in relation to leased properties.¹¹

CONCLUSION

The Safari Retreats ruling offers a fresh path for companies to assert ITC on structures utilized in business activities, as long as they satisfy the functionality criteria. Nevertheless, the verdict also presents obstacles for companies in figuring out how the exceptions outlined in Section 17(5)(d) interact, especially with respect to the terms 'plant or machinery' and 'on his own account.'

Businesses need to thoroughly evaluate their operations to ascertain if their structures serve a crucial functional purpose and can be considered as 'plant' for the objectives of claiming ITC under GST legislation. The ruling underscores the delicate equilibrium between curbing tax evasion and preserving the smooth credit mechanism that is fundamental to the GST framework.

For real estate developers and tax advisors, this determination necessitates careful adherence, project documentation, and contractual strategizing to effectively organize ITC claims. As GST legislation continues to advance, remaining aware of legislative changes and judicial interpretations regarding ITC eligibility will be essential for optimizing tax positions and ensuring compliance with India's evolving tax framework.

¹¹Shacheendran, An Analysis of GST Barriers Faced by Business Owners in India: An ISM Approach, available at: <https://journals.sagepub.com/doi/full/10.1177/09726225241247353> (Last accessed on 20th March 2025)

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