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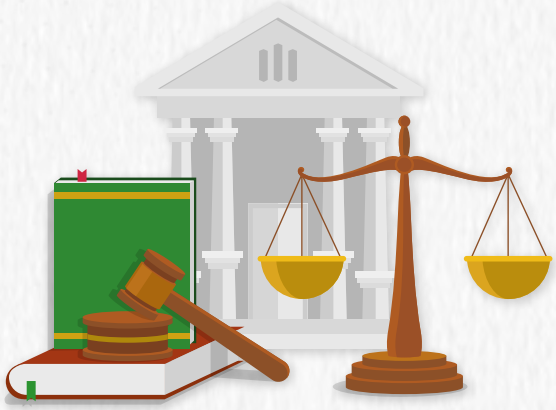
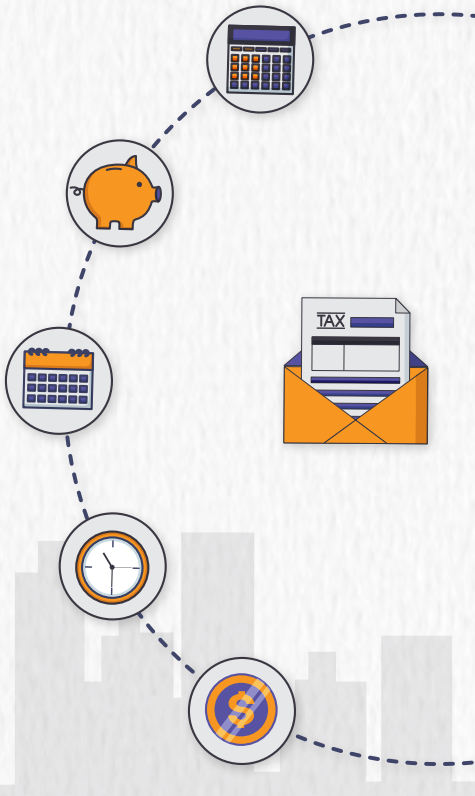


INDIAN SUPREME COURT'S
SAFARI RETREATS' VERDICT:

A Landmark Judgement on Input Tax Credit for Real Estate

25 October 2024



Supreme Court of India's Safari Retreats' Verdict:

A Landmark Judgement on Input Tax Credit for Real Estate

The recent Indian Supreme Court judgement in the *Chief Commissioner of Central Goods and Service Tax vs. Safari Retreats Private Limited & Others*[1] case is a landmark judgement under the Goods & Services Tax (GST) law in India, which is going to have a far-reaching impact across various sectors. Understanding the significance of this judgement and its impact will enable organisations to make more informed decisions with respect to their places of business.

Background:

The GST regime allowed businesses to claim credit 'Input Tax Credit' (ITC) on GST paid for inputs used in the process of the business to avoid a cascading tax effect or double taxation. However, certain items and services are ineligible for claiming input tax credit. Notably, this included GST paid on goods or services or both for construction of an immovable property except for input paid in the process of construction of plant or machinery as detailed below:

On Own Account	➢ Input ineligible including when such goods or services or both are used in the course or furtherance of business.
Works Contract	➢ Input ineligible except where it is an input service for further supply of works contract service.

The recent ruling by the Supreme Court in the case of Safari Retreats Private Limited (SRPL) has provided much-needed clarity on the term *plant* ***or*** *machinery* as defined in Section 17(5)(d). The Court determined that this term should not be interpreted in the same manner as *plant* ***and*** *machinery* as defined elsewhere in the CGST Act. This distinction has implications for how businesses can navigate ITC claims related to construction and other services.

Facts of the Case:

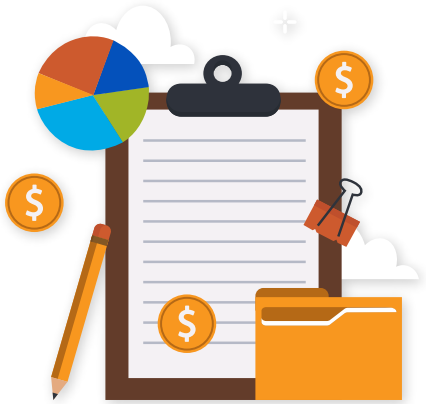
(i) SRPL is a company that has been engaged in the construction of shopping malls for the purpose of letting out premises in the malls to different tenants.

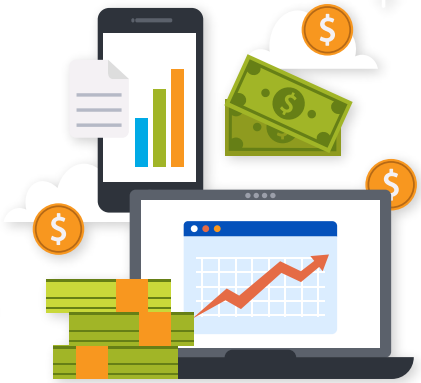
(ii) The project requires a significant amount of materials, inputs, and services, all of which are taxable under the CGST Act.

(iii) As SRPL rents out these units in the mall, it generates rental income, which is subject to CGST, as it constitutes a supply of service under the Act. Consequently, SRPL aims to claim ITC on the taxes accumulated from its rental income derived from leasing the mall premises.

Issue Involved in the Case-

(i) Disallowance of ITC for the construction of a mall, classified as an immovable property and deemed ineligible under Section 17(5)(d) of the CGST Act, 2017.





[1]Civil Appeal No.2948 of 2023

Outcome of the Case:

Orissa High Court

- Allowed ITC by reading down Section 17(5)(d)
- Section 17(5)(d) must be interpreted to allow ITC for properties leased for taxable services, avoiding cascading tax effect (tax on inputs & outputs)
- ITC should be allowed where the immovable property in itself is used for generating taxable income

Supreme Court

- The Supreme Court upheld the judgement of the Orissa High Court.
- The term "plant or machinery" in Section 17(5)(d) cannot be interpreted the same way as "**plant and machinery.**"
- The decision of whether a construction is a "**plant or machinery**" should be evaluated on a case-to-case basis.

The key matters discussed in the judgement are as follows:

(i) **Whether the definition of "plant and machinery" in the explanation appended to Section 17 of the CGST Act applies to the expression "plant or machinery" used in clause (d) of sub-section (5) of Section 17?**

The expression "plant and machinery" has been used at least ten times in Chapters V (Input Tax Credit) and VI (Tax Invoice, Credit and Debit Notes) of the CGST Act, and the expression "plant or machinery" occurs only once in Section 17(5)(d). Therefore, the intention of the legislature to treat the expression "plant or machinery" differently from the expression "plant and machinery" is apparent

(ii) **Difference between Clause (c) and Clause (d) of Section 17 of the CGST Act:**

Particulars	Clause (c)	Clause (c)
➢ **Term "plant or machinery"**	shall not be used here.	shall be used here significantly.
➢ **Input Tax Credit**	Permitted for works contract services provided for construction services that are intended for further supply in the business of works contracts.	Not permitted for works contract services used for construction services that are intended on their own account or for further supply in the business of works contracts.

(iii) **If it is held that the explanation does not apply to "plant or machinery," then what is the meaning of the word "plant"?**

The term "plant" is not defined in the CGST Act, the General Clauses Act, 1897 or any State GST enactments. A relevant ruling from this Court in *CIT, Andhra Pradesh vs. Taj Mahal Hotel, Secunderabad*[2] clarified that "plant" means land, building, machinery, apparatus, and fixtures used in business operations. Ultimately, a "plant" is an apparatus used by a businessman for carrying on his business, excluding stock in trade but including all goods and property, both movable and immovable. The Court has recognised various entities, including generating stations, hospitals, ponds, and even dry docks, as "plants." A building or a warehouse qualifies as a "plant" under Section 17(5)(d) if it serves as an essential for conducting business. However, if it merely serves as a setting for business activities, it will not qualify as a "plant."

Outcome of the Judgement

(i) As per Odisha High Court Decision, Section 17(5)(d) must be interpreted to allow ITC for properties leased for taxable services, avoiding cascading tax effects (tax on inputs & outputs). Therefore, renting a constructed building should not bar the right to claim ITC. The High Court had interpreted Section 17(5)(d) broadly, stating that ITC should be allowed where the immovable property is used for generating taxable income.

(ii) The term "plant or machinery" in Section 17(5)(d) cannot be interpreted the same way as "plant and machinery" as defined in the explanation to Section 17. The Court noted that the word "plant" in Section 17(5)(d) should not be restricted by the definition that excludes land, buildings, or other civil structures. Consequently, in certain cases, a building may also be considered a "plant," which falls outside the exceptions outlined in Section 17(5)(d) since it is included under "plant or machinery." It was determined that to interpret clause (d) of Section 17(5) appropriately, the term "plant" should be assessed using a functionality test.

(iii) The classification of a mall, warehouse, or any building other than a hotel or cinema theatre as a "plant" under the term "plant or machinery" in Section 17(5)(d) requires a factual analysis on a case-by-case basis.

[2][1967] 66 ITR 303 (AP)

Advith's Comments:

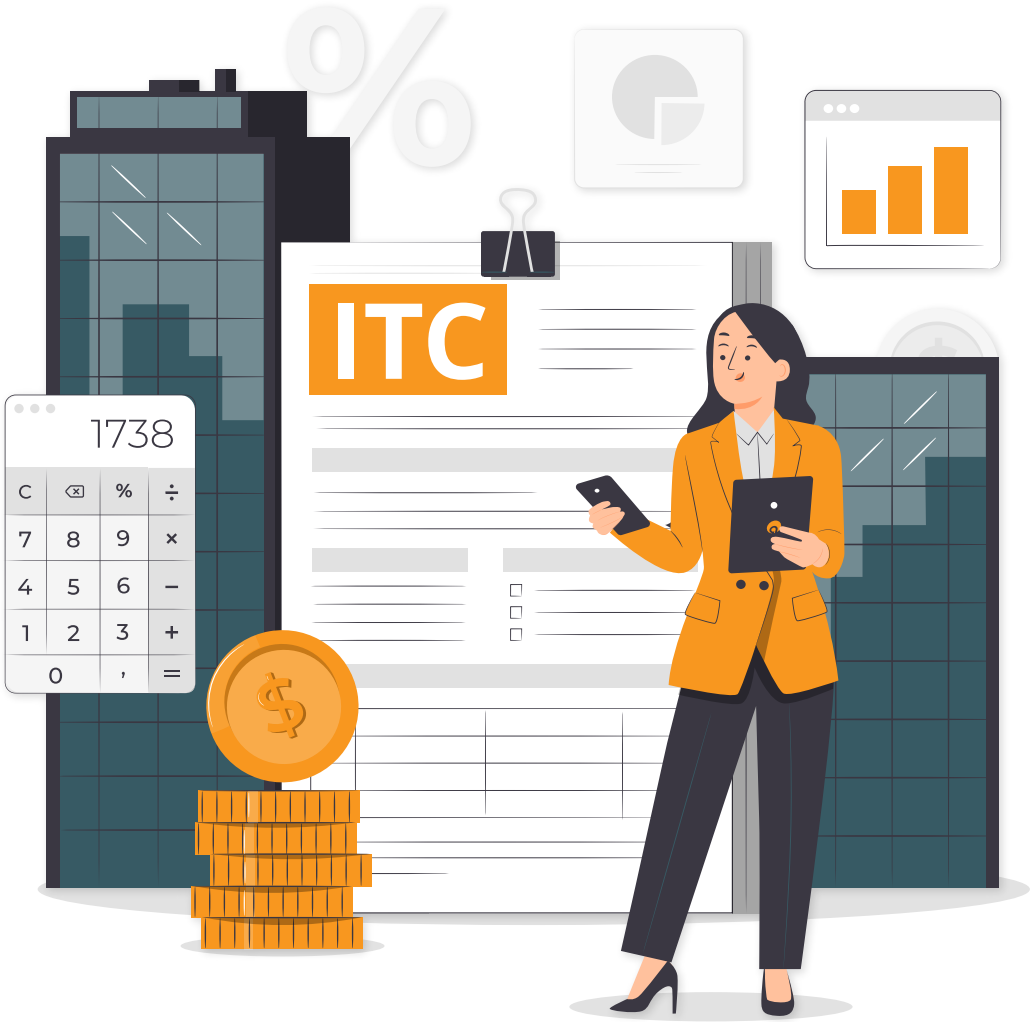
(i) The judgement of the Honourable Supreme Court has provided relief not only to numerous real estate developers selling properties but also to those engaged in infrastructure projects, including the construction of warehouses, malls, hotels, theatres, and more.

(ii) This assessment should consider the nature of the registered person's business and the role the building plays within that business. It was determined that a functionality test must be applied to ascertain whether a building qualifies as a "plant" for the purposes of Section 17(5)(d).

(iii) While the judgement has provided much-needed relief to those engaged in the infrastructure projects, the determination of whether a building is a "plant or machinery" building by way of a functionality test leaves a lot to assumptions and interpretation.
For example, consider an entity is engaged in the business of providing private cloud services. They have a place of business constructed for the dual purpose of housing servers and providing a workspace for employees. Determining whether such a premise qualifies as a "plant" is a complex decision to make

(iv) Further, while at the outset it may seem that this decision will have an impact only on businesses involved in real estate, infrastructure, and leasing, the outcome of this judgement will also have an impact on the way that negotiations for lease and rent, fees for usage of co-working spaces and similar agreements are carried out.

(v) While the Supreme Court judgement has pointed guidance in the appropriate direction, it is only the first step in a long journey of evaluating the implications of Section 17(5).



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