

TAX FLASH NEWS

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ITC on construction services available against tax payable on lease income from such constructed property – Orissa High Court

Recently the Orissa High Court¹ has allowed input tax credit (ITC) on inputs and input services used for construction of a shopping mall, to be availed against GST payable on rent income receivable from tenants of such constructed shopping mall.

Facts of the case

Safari Retreats Pvt. Ltd. (petitioner) is mainly engaged in the business of constructing shopping malls and subsequently letting out the same to various tenants. In the instant case, the petitioner had purchased various goods and services for carrying out construction of one such shopping mall.

With the intention to avail credit of input tax charged on such purchases, the petitioner had approached revenue authorities to seek guidance. However, in light of the restriction imposed under section 17(5)(d) of the CGST Act, 2017, the petitioner was advised against claiming the ITC by the revenue authorities.

Section 17(5)(d) of the CGST Act, imposes restriction on availing tax credit by a taxable person in respect of goods or services or both attributable for construction of an immovable property (other than plant and machinery) on its own account including when such goods or services or both are used in the course or furtherance of business.

It was contended by the petitioner that, sale of an immovable property, post issuance of the completion certificate (CC), does not attract levy of GST, as it breaks the supply chain. The denial of credit on such transaction is being accordingly justifiable as GST is not applicable.

However, the position is different when a property is been constructed with the purpose of letting out. On a let out property, the supply chain does not break, as rental income is subject to levy of GST.

Order by the High Court

The very purpose of the Act was to make uniform provisions for levy, collection of tax and to prevent multi taxation. Considering the provision under section 17(5)(d), the narrow construction of interpretation put forth by the department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount of tax without any basis.

In the instant case, the petitioner has retained the property and is not using it for its own purpose, but it is letting out the property, which is covered under the GST law, but still the petitioner has to pay huge amount of GST, to which he is not liable.

In that view, the provision of section 17(5)(d) is to be read down and the narrow restriction as imposed, is not required to be accepted, the very purpose of the credit is to give benefit to the assessee.

If the assessee is required to pay GST on the rental income arising out of investment on which it had paid GST, it is required to have the tax credit paid on inputs and input services.

Our comments

It is a favourable judgement as the High Court has pronounced the ruling considering the intent of the law rather than the plain reading of the provisions contained therein. This judgement would be relevant for various sectors where income is earned from immovable property. However, it needs to be seen, whether the Hon'ble Supreme Court would agree with the above view.

¹ Safari Retreats Pvt. Ltd. [TS-350-HC-2019(ORI)-NT]

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