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Integrated Association of Micro, Small & Medium Enterprises of India

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Dear Members,

This is an old news for some. But a BIG NEWS for many even now.

Input Tax Credit on construction of Immovable property

**ITC allowed to
Builders on
Rented
Property
Orissa High
Court**



The very purpose of the act is to make the uniform provision for levy collection of tax and to prevent multi taxation.

That is a good relief (but “Risky”) for all of the Assesseees.

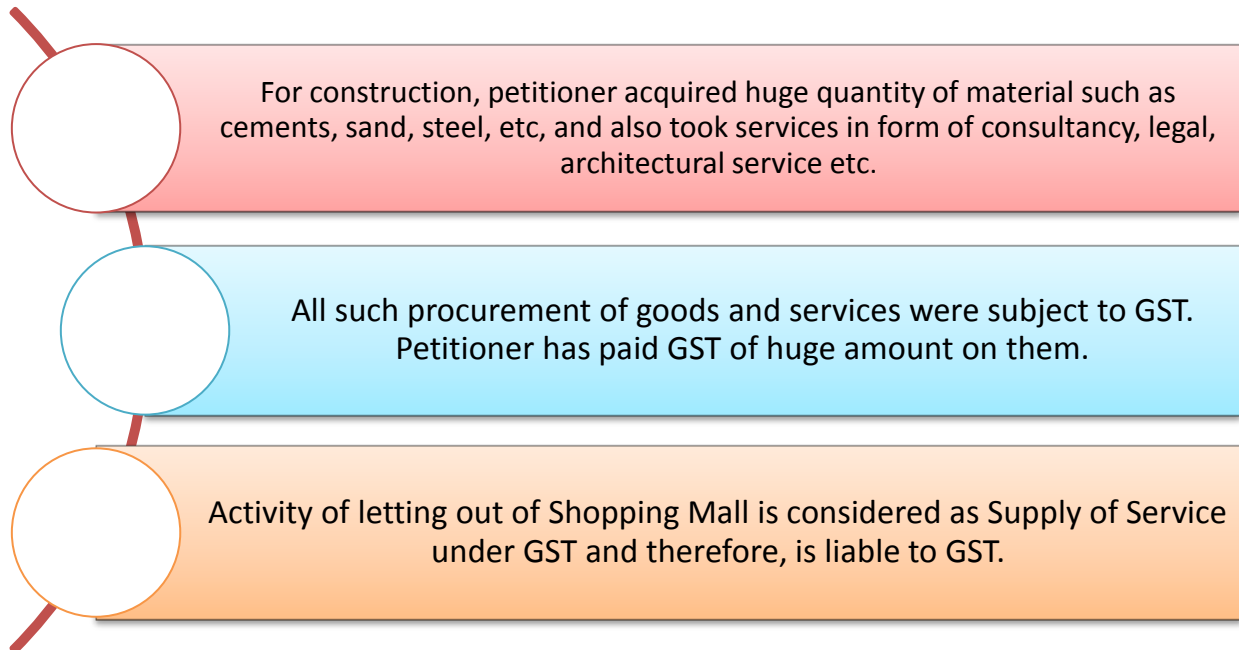
Honorable Orissa High Court has held that as petitioner is paying GST on rental income which is arising out of investment on which GST has been paid.

And since there is no break in chain of business from point of procurement of material and services for construction till renting of immovable property, ITC should be allowed on construction of immovable property when used for further renting.

Source

Orissa High Court Order dated 17 April 2019 (Order), in in *Safari Retreats Private Limited v Chief Commissioner of Central Goods & Service Tax* [W.P. (C) 20463 of 2018].

Facts Of The Case



Let's understand what Section 17(5)(d) says

Section 17(5)(d) states “goods or services or both received by a taxable person for construction of an immovable property (other than plant & machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.”

Contentions raised by the petitioner

The petitioner has contended that **Section 17(5)(d)** of the CGST Act, 2017 on the following grounds:

- As there is no break in business activity of petitioner from point of construction of mall till letting out it to its tenants. Whereas, disallowance of input tax credit to petitioner will break the chain of tax credit and will result in cascading effect of taxes.

- ITC is allowed when a builder sells building before issuance of completion certificate as the tax chain is not broken. Similarly, chain is not breaking in case of letting out also. Therefore, not adopting same interpretation in case of renting of shopping mall is highly discriminatory and arbitrary in nature.
- As the shopping mall is intended for letting out, the same shall not be considered as constructed 'on his own account' therefore the restriction under 17(5)(d) shall not be applied.

Revenue Department contention

- Input tax credit can't be claimed as a matter of constitutional right by any assessee. Article 14 of the constitution can be said to be breached only when there is gross disparity resulting in clear discrimination
- Provision of section 16 supra can't be read in isolation rather should be read with conditions and restrictions provided. Assessee can't follow act to the extent of his suitability. Therefore, provisions of section 16 should be read with restrictions provided with it under section 17.
- Provisions of section 17(5)(d) should be read down and narrow restriction as imposed by the department while reading provisions is not acceptable as the very purpose of the credit is to give benefit to the assessee.

Orissa High Court Decision

The very purpose of the act is to make the uniform provision for levy collection of tax and to prevent multi taxation.

In the given case, petitioner is retaining the property and is not using it for its own purpose rather he is letting it out which is covered under GST.

Still petitioner is required to pay huge amount of GST to which he is not liable

Provisions of section 17(5)(d) should be read down and narrow restriction as imposed by the department while reading provisions is not acceptable as the very purpose of the credit is to give benefit to the assessee.

Conclusion of the High Court

As Petitioner is paying GST on rental income which is arising out of investment on which GST has been paid by him. Therefore, petitioner should be entitled to claim ITC paid on inward supply of goods or services.

Hon'ble high court had allowed benefit of ITC. However, it refused its inclination to declare provisions of Section 17(5)(d) as ultra vires.



Risk ? Yes

It is in Builders' favour. It is in the Businessman's Favour. But, this is not as per the narrow Language written in the law. This is not as per the meaning that the GST Dept is taking.

This Judgement is Good and Fair. But GST dept is most likely to go to Supreme Court against this judgement. So, follow this judgement but keep the risks in mind.



Question : What are other High Courts doing about this ?

Delhi High Court issues notice to Revenue in similar matter

On very similar lines, the Delhi High Court has issued notice to Revenue while hearing Petitioner's challenge to section 17 (5) (c) & (d) of the CGST Act pertaining to blocked credit for hotels.

The Revenue in this case denied ITC on procurement of goods and services including works contract used for immovable property construction. This petition was filed seeking to declare section 17 (5) of the [CGST Act, 2017](#) to be ultra-vires of Article 14 of the Constitution of India, as same is violating its fundamental right.

The Petitioner has also requested for formation of High-Level Committee for addressing interpretational issues.

The matter is listed on August 21, 2019 in Honorable High Court of Delhi.

Case id = [TS-353-HC-2019 (DEL)-NT]



Views of the Association

Your Association panel of GST Experts, distinguishes the words “for our business purpose”. Making a Building for own factory / own office is different from Making a building for giving on rent.

Core Answer is self apparent in this question :

“....If a builder sells the same building before getting the OC, he gets the ITC on all inputs, then why not a Builder who gives on rent....”

Note

Do not , we repeat, do not take ITC on the Building of your own office, and own Factory That is not covered in this judgement at all.



Foot Note

The GST things are good and easy, if you do them properly.
Do not take un-necessary risks. Follow the Law in both letter and spirit.

Some important mistakes people are doing are

- “Not reconciling the Form 2A” in Time”,
- “Taking ITC where not eligible”,
- “not paying vendors in time”,
- “Not matching books with the Electronic Cash Ledger and Electronic Credit Ledger”.
- Not auditing the Vendors’s bills properly (physical bills are as per Rule 46 or not)

Do remember, the GST audits are going to begin soon
So, better check your records and get ready to “welcome” the GST officers on audit duty.

< end of the writeup >

For queries, suggestions and feedback , you can e-mail us

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For personalised suggestions, and solutions, contact our I am SME of India Team and Consultants



Delegation of Diamond, Gems and Gold Jewellery Manufacturers along with officials of Gems & Jewellery Exports Promotion Council visited IamSMEofIndia to interact with Sh. Vipul Goel, Hon'ble Minister of Industries, Commerce, Environment & Skill Development, Haryana.

The agenda was to explore the possibilities of setting up an exclusive Gems, Jewellery & Diamonds Park in Haryana, the infrastructure support, Skills and other incentives. The proposed Cluster has potential to provide jobs to more than 50,000 within a span of 3-4 years and add to exports as well as Domestic Sales to the tune of more than Rs.10,000 crore.

The meeting was extremely fruitful and Hon'ble Minister assured of complete support from the State Government in facilitating the entrepreneurs.

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Sh. Vipul Goel, Hon'ble Minister of Industries, Commerce, Environment & Skill Development, Haryana,
with Mr Rajiv Chawla, Chairman, I am SME of India, at the
IamSME of India Habitat Centre, Faridabad, Haryana.



Sh. Vipul Goel, Hon'ble Minister of Industries, Commerce, Environment & Skill Development, Haryana, with Mr. Rajiv Chawla, Chairman, I am SME of India, and some of the members of the Diamonds, Gems, and Jewellery Manufacturing Industry.



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We at **I am SME of India**, are regularly conducting various Study tours, SME Clusters, Energy Efficiency Programmes, Exhibition Participations, both in India and Abroad.

The Night of Failures celebrated by I-am-SME-of-India

The first ever and one of it's kind. Innovative & Inspiring!

Failures are the first steps to success.

They must, therefore, not only be celebrated but respected too.





The Night of Failures celebrated by I-am-SME-of-India

At Hotel Raddison Blu, Faridabad, with Hundreds of Entrepreneurs, joining together in celebrating "Failures"... since failure is an Event, not the person.

Awake, Arise, and Stop not... till your Goal is reached.

I-am-SME-of-India invites you to remain connected on Emails, our Whatsapp Groups and [our Facebook page](#) !

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