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Flow of Input Tax Credit (ITC) in Construction Sector in Goods and Services Tax (GST) Regime

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ABSTRACT

The Input Tax Credit (ITC) under the GST framework is a significant mechanism. It mitigates the cascading effect of taxes by allowing the business to claim credit for the tax paid on purchases of goods or services or both to offset the GST due on outward sales. This mechanism ensures that tax is paid only on the value addition at each stage, thus making taxation equitable. ITC plays an important role maintaining and facilitating the competitiveness and also ensuring a seamless flow of tax credits throughout the supply chain across India. Input Tax Credit (ITC) is therefore a pivotal aspect in the GST regime in all sectors including the Construction Sector. It allows the promoter / developers to claim credit for the GST paid on the purchase of raw materials, input services, and capital goods, which are integral to the construction activities thereby contributing to the reduction of the overall cost of construction and enhancing the profitability of projects. This article studies the flow of ITC in the construction sector. It also studies its impact on business in the construction sector if ITC flow breaks.

Keywords: *GST, Impact, ITC, Flow of ITC, Construction Sector and Real Estate.*

I. INTRODUCTION

Input Tax Credit (ITC) refers to the tax paid on input goods, capital goods and services purchased for a business, which can be claimed as a deduction or set off at the time of paying output tax on the finished/next product(s) of the given business entity. When a product/service is bought from a registered dealer / manufacturer / service provider, tax is paid on the purchases. When the finished/output goods are sold or the services rendered, tax is collected from the buyer to be paid to the Government. The tax paid at the time of purchase is adjusted / set-off, against the amount of tax required to be paid at the time of sale and the balance liability of tax has to be paid to the Government by way of cash. This mechanism is called utilization of input tax credit. Input tax is defined as per Section 2(62) of the CGST Act 2017[1] as:

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""Input tax" in relation to a registered person, means the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;"

Chapter V of the CGST Act, 2017 (Section 16 to Section 21) and Chapter V of the CGST Rules 2017[2] (Rule 36 to Rule 45) deal with the mechanism, eligibility and conditions for the availment and utilization of the Input Tax Credit in GST.

The Input Tax Credit (ITC) under the GST framework forms a significant mechanism to mitigate the cascading effect of taxes. As was in the earlier regime, it allows a business to claim credit for the tax paid on purchases, which can be used to offset the GST due on sales. This mechanism ensures that the tax is paid only on the value addition at each stage, making the taxation equitable and transparent. Businesses thus, reduce their overall tax burden with the ITC playing an important role maintaining the competitiveness and also ensuring a seamless flow of tax credits throughout the supply chain. The GST regime allows seamless credit on all inputs, input services and capital goods used for the purposes of business of a taxable person except in the case of 'blocked credit' where, the ITC is not available / provisioned, even when these goods or services are used for purposes of business. Further, credit is not available on supplies charged to tax under composition scheme and supply of exempt goods and/or services.

ITC in the Construction Sector:

Earlier, Service Tax was applicable on construction services provided by developer / promoter / builder, but they could not claim credit for the Service Tax paid on input services, leading to a higher overall cost of construction. Similarly, VAT rates varied from state to state, creating discrepancies and increasing the compliance burden. Therefore, it is seen that the pre-GST era

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did not allow seamless credit flow, resulting in a cascading effect of taxes and hence higher property prices, impacting the affordability of residential properties.

The Input Tax Credit (ITC) is a pivotal aspect in the real estate sector. It allows the promoter / developers to claim credit for the GST paid on the purchase of raw materials, input services, and capital goods, which are integral to the construction process. This mechanism mitigates the cascading effect of taxes, contributes to the reduction of the overall cost of construction, and thereby enhancing the profitability of projects. The recent changes in the GST rates and the conditions under which ITC can be claimed with the aim of simplifying the tax structure and compliance for builders have had a significant impact on the sector. With the inception of GST w.e.f 01.07.2017, the tax liability under GST was 18% with the facility of availing ITC.

However, with the change in scenario from 01.04.2019 to promote the housing sector and make residential properties more affordable to the buyer, the developer / promoter / builder paid taxes at a reduced rate but was not allowed availment of ITC. The government also provided concessional rates for affordable housing projects to encourage home-ownership among middle and lower-income groups. The removal of ITC for under-construction properties has been a point of contention. While the change simplified the tax structure, it also meant that developers could not claim credit for the GST paid on inputs, which led to increase in the overall cost of construction. This cost may be passed on to buyers, thus impacting property prices. To remain competitive in the market, the Developer / promoter / builder need to carefully manage their costs and pricing strategies. They may need to explore alternative cost-saving measures, such as bulk procurement of raw materials and efficient project management, to mitigate the impact of ITC removal. The removal of ITC thus may encourage developers to focus more on affordable housing projects, where the GST rates are concessional, and the overall tax burden is lower.

However, on the flip side, it may be said that the removal of ITC simplifies the tax structure for residential real estate projects, making it easier for developers to comply with GST regulations. It eliminates the need to maintain detailed records of ITC claims and reconciliations. The challenge that remains for the developer / promoter / builder is to adapt to the new tax structure and to maintain competitive prices by exploring innovative ways to manage costs and pricing.

It appeared that, just when the developer / promoter / builder had settled down to reconcile the taxability of the real estate sector, moving from the service tax era where varied taxes were required to be navigated, to the GST era, the structure of taxation was altered from

01.04.2019. The revised scheme applied to the residential and commercial apartments which were covered under the RERA, 2016. For the projects which commenced after 01.04.2019, the scheme was made compulsory. For the projects which had commenced earlier, also called the "ongoing projects", and existed as incomplete as on 31.03.2019, the developer / promoter / builder was given the option to either shift to the new scheme (without ITC) or continue with the earlier scheme (with ITC). The new scheme envisaged payment of tax @1.5% (effective 1% after deduction of 1/3rd value on account of land) [0.5% CGST, 0.5% SGST or 1%IGST] for affordable apartments and 7.5% (effective 5% after deduction of 1/3rd value on account of land) for other than affordable apartments (without availing ITC). In respect of commercial apartments, GST is 5% in residential projects [called RREP (Residential Real Estate Project) where carpet area of commercial portion of the project is less than 15% of the total carpet area of the project apartments] and 12% in non-residential projects with ITC. These rates were introduced as per the Notification No. 03/2019 – CT (Rate), dated 29.03.2019[3].

It is at this stage that the builder / promoter faced hassles with the scheme. With this shift to the new scheme, the developer / promoter / builder are now faced with the problem that the tax, in case of shifting to the new scheme, is to be paid in cash. Further, he has to identify the input tax credit taken during the earlier period and undergo the process of segregating them as per procedure prescribed in the notification to reverse any excess credit identified or avail credit of any ITC less availed. However, there was no advantage for availing such credit as he has to pay GST @ 1% / 5%, as the case may be, in cash and the same could only be used for discharging tax on any other supply of service by him, which usually never arose. Further, since registration is project wise due to effect of RERA 2016, the credit so available is useless with no possibility to use it elsewhere.

Selection of retaining the old scheme was to be done before 10.05.2019 failing which the new scheme automatically kicked in. More than the ease of opting for scheme, the real challenge lay in the calculations as per the notification 03/2019 – CT (Rate), project wise, and the compliance to the conditions laid therein. Therefore, on account of this shift, the taxpayer is not able to claim ITC for such projects and hence there will be a break in credit chain.

Prior to 01.04.2019, when the builder / developer was allowed to claim ITC paid on input raw material, services and capital goods, they had to bear contentions of having availed irregular credit on account of the same being not eligible in terms of the provisions of law. The case of the tax payer may be that the "clauses of the provisions of GST law appear to be inconsistent or that they are manifestly arbitrary" as had been argued in the case of Safari Retreats in the Hon'ble Supreme Court. The availability of ITC is subject to such conditions and restrictions

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as may be prescribed by the rules framed under the CGST Act. ITC being a creature of legislation, it can exclude specific categories of goods or services from ITC. Under sub-section (1) of Section 16, a 'registered person' only is entitled to take credit of the input tax charged on any supply of goods or services or both to him, which are used or intended to be used in the course of or in furtherance of his business. Conditions for the use of ITC are prescribed by sub-section (2) of Section 16 of the CGST Act 2017. It is to be seen that the procurement of goods or services by the tax payer must be "directly essential" to business operations and "functionally integral" to performance or output. And then there is the blocking of credit under Section 17 of the CGST Act 2017 which has become a bone of contention regarding its interpretation and an impediment to the flow of ITC. With tax compliance also becoming challenging, the taxpayer has to juggle with various entities to stay afloat. This article attempts to study the various aspects regarding the availability of ITC, its eligibility and the flow of ITC which pose a challenge to the Construction Sector.

Statement of the Problem

Though ITC is designed to mitigate the cascading effects of the tax by offsetting the GST due on outward sales, the restrictions placed by the provisions of law play a great role in the businesses of the Construction Sector. The actual eligibility of ITC, and denial of ITC in specific circumstances, do not allow for smooth business. It may result in the obfuscation of funds, non –accountability of inward material as well as resorting to other tactics by the taxpayer to achieve their ends. The 101st Constitutional Amendment Act of 2016 is created to diminish the cascading effect of taxes and promote seamless flow of ITC throughout the supply chain, thereby preventing double taxation. The GST framework is meticulously structured to levy tax exclusively on value addition at each stage, commencing from manufacturing or importation and culminating at the final retail level, while permitting for the availment of ITC for taxes incurred on the procurement of goods and services. Any imposition of restrictions on the availment of ITC would contravene the fundamental objectives of the GST regime, potentially bringing back the effects of cascading tax. To understand the impact of these restrictions and the denial of ITC, detailed study is undertaken in this article analyzing the flow of ITC, its restriction in the provisions of law and how efforts need to be made to break this conundrum.

II. LITERATURE REVIEW

Adopting the Doctrinal method of research, literature on the subject matter was studied. For the purpose of this paper, the Central Goods and Services Act, 2017 which prescribes

statutory law on various aspects of GST was studied. The CGST Rules 2017 were examined to gain an understanding into the procedures required to be followed. Relevant articles on the subject matter were studied to gain understanding.

Notification No. 03/2019 – CT (Rate), dated 29.03.2019[3] which formed an important turning point in the way the business was to be carried on was studied to understand the procedure to be adopted. e – version GST flyers[4] "GST – Input Tax Credit Mechanism– details the Input tax credit mechanism envisaged under GST".

Mayuri Tatiya [5] concluded that *"Analysis of judgment of the Orissa High Court in the case of M/s Safari Retreats revealed - Section 17(5)(d) of the CGST Act restricts the seamless flow of credit and that denial of ITC in is unjust, arbitrary, oppressive and contradictory to the basic rationale of GST. And also the restriction under Section 17(5)(d) of the CGST Act should apply only in those cases where there is a break in the tax chain. However, in the present case, there is no breakage in the tax chain therefore, logically ITC should be available but the said provision should be given a literal interpretation and the restriction of Section 17(5)(d) of the CGST Act should apply accordingly to all circumstances. Hence, we are of view that the entire section is confusing and contradictory and further explanations are required."*

In their article RMPSCo[6], Chartered Accountants concluded that *"The real estate sector faces significant ITC restrictions, particularly for residential projects under the new GST regime. However, commercial projects, contractors, and leasing businesses can still benefit from ITC under specific conditions. To maximize tax benefits while ensuring compliance, builders, contractors, and buyers must carefully structure their transactions and stay updated on legal developments and policy changes."* In their other article RMPSCo[7], Chartered Accountants discussed the conditions of purchase of 80% goods from registered dealers and repercussions of non-compliance and observed that *"Builders cannot use Input Tax Credit (ITC) to pay GST. They must pay in cash only. They cannot claim ITC on these purchases. GST laws do not allow ITC to offset RCM liabilities on purchases where there was non-compliance of the 80%rule".*

Madhukar N Hiregange &Venkata Prasad[8] explained that *"the Orissa High Court decision in the Safari Retreats case implied that - the narrow construction of interpretation put forward by the revenue department is frustrating the very objective of the CGST Act as the assessee has to pay a huge amount without any basis. The provisions of Section 17(5)(d) is to be read down as the very purpose of the credit is to give benefit to the assessee. That the decision acts*

as the precedential value in the similar cases of ITC denial and also restrictions that frustrate the objective of GST like cascading effect, double taxation, etc". Abhay Desai[9] concluded that *"regarding the calculations required to be carried out by the promoters requires a lot of work to be done by the concerned promoters of the real estate projects to arrive at the amount of ITC which shall be required to be paid back (as will happen in majority of cases). Accurate working can aid in deciding for the ongoing projects whether to opt for the new scheme or to continue under the old scheme. Accuracy of the working can also minimize the cost and shall enable to plan for the cash flow requirements to avoid higher interest cost, if installments are sought".*

Dr. Kalra Sanjay[10], concluded that *"analysis of Sections 17(5)(c) and 17(5)(d) of the CGST Act, 2017 and denial of ITC for construction of such building, intended for renting out, would lead to a cascading effect of taxation, which is contrary to the objectives of GST. By blocking the ITC on the rentals collected by the assessee who has constructed the building, the State is unjustly enriching itself and violating the right to avail ITC flowing from Section 300A of the Constitution of India. The purpose of ITC is to prevent tax cascading and, thus, it should be allowed if GST is being paid on the rental income from such properties. Restricting ITC in such cases would frustrate the objective of GST".* Sanjay Kumawat[11] concluded that *"the main objective of GST, i.e., seamless flow of credit, is an illusion for the builders. Existing provisions of input tax credit will lead to various litigations and assessment related disputes. Further, the management of the separate books of accounts for project wise/credit wise/flats wise/common utility wise will lead to new and biggest headache for the builders. If the Government does not relax any of the restrictions, then the GST may burden the real estate industry with major Input Tax Credit being unavailable".*

Plant and machinery (comprising of equipment, apparatus and machinery) largely refer to tools or machines that are required for performance of a specific task or function or for reduction of effort. *Lifts, Fire Safety Systems, Furniture& Fixtures, Electrical equipment etc.* qualify to be machines or a set of working parts of a machine to perform a particular task. During the course of business the taxpayers could procure such equipment, apparatus and machinery and use them for the performance of tasks. However, in some cases, it may be the case that the same may be fixed to earth in order to perform the task efficiently. The definition of 'plant and machinery' under Section 17(5) specifically covers plant and machinery which is fixed to the earth by way of foundation or structural support. Therefore, there is every possibility that the revenue may decide to deny credit of the ITC that is associated with such equipment, machinery and apparatus putting the tax payer to great loss. Credit of plant and

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machinery cannot be denied solely on grounds that the same is fixed to the immovable property. The term "immovable property" is not defined under GST. In general parlance, immovable property may be understood as an immovable object, a property that cannot be moved without destroying or altering the object. The inputs which are being considered as immovable property to deny the credit on the basis of the provisions of the CGST Act 2017 (say, items like lifts, DG sets, HVAC, firefighting equipment and building management equipment) can be easily dismantled and reused without significant damage to the immovable property as well as to the plant and machinery. Hence, it cannot be said that the said plant and machinery partake the nature of immovable property. Further, each of the said items have their independent function such as firefighting or surveillance or generation of electricity. They have an existence apart from the immovable property and hence, unlike doors and windows, cannot have said to be annexed for the sole enjoyment of the immovable property. Such an interpretation has been made by the Hon'ble Courts and such emphasis is required to be made in order to consider the eligibility of credit of ITC. Some of the decisions are as below:

In Sirpur Paper Mills Ltd. vs. Collector of Central Excise, Hyderabad[12] it was observed that *"In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper making machine it could always remove it from its base and sell it. Where an item is attached to earth only for operational efficiency and smooth functioning, then, the same can be treated as movable property."*

In CCE vs. Solid and Correct Engineering Works & Others [13] it was ruled that "Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also, the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. The general rule is that what is annexed to the freehold becomes part of the realty under the maxim *Quicquid plantatur solo, solo cedit*. Even so, the question whether a chattel is imbedded in the earth so as to become immovable property is decided on the same principles as those which determine what constitutes an annexation to the land in English law. The English law has evolved the twin tests of degree or mode of annexation and the object of

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annexation. In Wake V. Halt (1883) 8 App Cas 195 Lord Blackburn speaking for the Court of Appeal observed: *"The degree and nature of annexation is an important element for consideration; for where a chattel is so annexed that it cannot be removed without great damage to the land, it affords a strong ground for thinking that it was intended to be annexed in perpetuity to the land. The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete. Attachment in order to qualify the expression "attached to the earth", must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures."*

In the case of Vodafone Mobile Services Limited vs. CST, Delhi[14] it was held that *"In view of this court, in the facts of the present case, the permanency test has to be applied, in the context of various objective factors and cannot be confined or pigeonholed to one single test. In the present case, the entire tower and shelter is fabricated in the factories of the respective manufacturers and these are supplied in CKD condition. They are merely fastened to the civil foundation to make it wobble free and ensure stability. They can be unbolted and reassembled without any damage in a new location. The detailed affidavit filed by the assessees demonstrate that installation or assembly of towers and shelters is based on a rudimentary "screwdriver" technology. They can be bolted and unbolted, assembled and re-assembled, located and re-located without any damage and the fastening to the earth is only to provide stability and make them wobble and vibration free; devoid of intent to annex it to the earth permanently for the beneficial enjoyment of the land of the owner".*

In Peruman Naicar vs. Ramaswamy Kone and Anr[15] it was observed that *"Considering the decision in case of Subramaniam Chattiar (supra), Madras High Court held that for a chattel to become part of immovable property and to be regarded as such property we should think, it must become attached to the immovable property as permanently as building or a tree is attached to the earth. If in the nature of things, the property is movable property and for its beneficial use or enjoyment it is necessary to imbed or fix on earth though permanently i.e.*

when it is in use, it should not be regarded as immovable property for that reason". This view has also been followed in National Radio and Electronics Co. Ltd v. CCE Bombay [1995 (76) ELT 436 (Tr.)], IGE (India) Ltd. v. CCE [1991 (53) ELT 461 (Tri)]".

K.N. Subramaniam Chattiar vs. M. Chidambaram[16] case observed that *"Madras High Court, while construing the definition of immovable property, observed that "a thing is imbedded in earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself then it remains a chattel even though fixed for the time being so that it may be enjoyed. The question must in each case be decided according to circumstances."*

In the case of Satyesh Brine chem Private Limited[17] it was held that if construction of immovable property is plant and machinery, the same would be eligible for credit. The decision stated *"However, it is pertinent to note that the said clauses (c) and (d) covers the works contract services and goods and/ or service received for construction of immovable property, other than plant and machinery. Thus, even if the works contract service and goods and / or services are received for construction of immovable property, if such construction of immovable property is 'plant and machinery', the same would be outside the purview of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017 and eligible for input tax credit."*

In the case of Tarun Realtors Pvt. Ltd[18] the AAAR, Karnataka held that lifts and escalators are fixed to the earth with structural supports and hence the same qualify to be a plant and machinery. It noted that *"It is seen from the copies of invoices furnished by the appellant that, in the case of Lifts, escalators and travellator, the vendor M/s OTIS Elevator Company has entered into a contract with the appellant for the supply and installation of passenger lifts, service lifts, escalator and travellator at the project site. No doubt lifts, escalator and travellators are fixed to the earth with structural supports and they qualify as plant and machinery."*

III. FLOW OF ITC

Having introduced the reason for the availability of ITC in the preceeding paragraphs, it must also be understood that the availability of ITC is subject to such conditions and restrictions as may be prescribed by the rules framed under the CGST Act. ITC being a creature of legislation, it can exclude specific categories of goods or services from ITC. While dealing with the issue of the Constitutional validity of clauses (c) and (d) of Section 17(5) of the CGST Act, The Apex Court in the case referred supra, observed that

"The right of ITC is conferred only by the Statute; therefore, unless there is a statutory provision, ITC cannot be enforced. It is a creation of a statute, and thus, no one can claim ITC as a matter of right unless it is expressly provided in the statute. It cannot be disputed that the legislature can always carve out exceptions to the entitlement of ITC under Section 16 of the CGST Act."

This implies that the provisions of the CGST Act 2017, in terms of the ITC on inputs and services may impact the eligibility of the ITC availed by the taxpayer in such a way that the chain of credit is broken. The break in the **Input Tax Credit (ITC) chain** in the **construction of the residential sector** is primarily due to **GST regulations** that restrict ITC claims on certain types of construction activities. For example, when in a chain of transactions, service is done for self, the chain of credit is broken and the entitlement to credit is broken. Under provisions of Section 17(5) of the CGST Act, 2017, ITC is disallowed on goods and services used for constructing immovable property. If the property qualifies as 'plant and machinery' or is related to further supply of construction services, the chain of credit does not break. Therefore, some sectors may maintain a continuous and efficient ITC chain whereas, in a sector like construction, there may be breaks in the chain of credit flow.

The recent case of Safari Retreats and the judgment of the Hon'ble Supreme Court is a classic example to emphasize as to how the flow of credit in the sector is lost. The **Safari Retreats ruling** has had a significant impact on businesses involved in **commercial leasing, real estate development and infrastructure projects**. Businesses developing office spaces, companies constructing malls for leasing retail spaces, hotels and resorts constructing new properties for leasing or renting are some cases where ITC restrictions lead to higher costs and the ITC paid on input goods and services are lost.

At this juncture it is important to visit the concept of works contract in the construction sector as it is a very important part of the activity in this sector. Such importance is on account of the definition of works contract in the CGST Act, 2017 wherein, construction of immovable property is involved along with transfer of property in goods during its execution. If there is no transfer of goods and only supply of services, the contract may not be considered as works contract. Further the end product should be an immovable property. In this regard, the provisions of clause (c) and(d) of Section 17(5) of the CGST Act 2107 are to be noted as these provisions play an important role to determine the availability of credit in the construction sector and whether or not the same is to be restricted.

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The Hon'ble Supreme Court in its analysis of clause (c) of Section 17(5) of the CGST Act 2017 in the Safari Retreats case [Civil Appeal No. 2948 OF 2023 (2024 (90) G.S.T.L. 3 (S.C.))] observed that

"The non-obstante clause used at the beginning of sub-section (5), seeks to override both sub-section (1) of Section 16 and sub-section (1) of Section 18. Sub-section (5) of Section 17 carves out an exception to the provisions of sub-section (1) of Sections 16 and 18, which confer the benefit of ITC. Clause (c) applies when works contract services are supplied for constructing immovable property. In the case of works contract services supplied for the construction of immovable property, the benefit of ITC is not available. However, there are exceptions to clause (c). First is when goods or services, or both, are received by a taxable person for the construction of "plant and machinery", as defined in the explanation to Section 17. The second exception is where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract."

While analyzing Section 17 (5) clauses c & d, the Apex Court observed that

"In the case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available."

Elucidating the usage of words in the aforesaid clauses, the Apex Court finally held that in the Safari Retreats case, in particular, the case would have to be sent back to the High Court (of Orissa) for deciding whether the mall in question would satisfy the *'functionality test'* of being a plant which was not done, as required, when the case was decided by the High Court. It further held that in view of each project being different, fact finding is required to be done in each case so that it can be termed as a plant within the meaning of bracketed portion in Section 17(5)(d). The same applies to warehouses or other buildings except hotels and cinema theatres. With such an interpretation, there is hope that the chain of credit would not be broken keeping the spirit of GST alive for enabling the taxpayer to benefit from the credit of ITC.

With interpretations in different rulings of the Courts, it appears that the manner of interpretation of the restrictive provisions of the CGST Act 2017 needs to be revisited and a proper narrative provided to give clarity to the position of law.

In view of the discussion in the literature review supra regarding the decisions of the Honorable Courts and other judicial rulings, it can be clearly construed that blockage of ITC under Section 17(5)(c) or 17(5)(d) of CGST Act is completely unwarranted and is to be

decided on case to case basis as detailed by the decision of the Apex Court in the Safari Retreats case. Further, the Hon'ble Apex Court, in its ruling regarding Safari Retreats Private Limited, analyzed the phrase *"on his own account"* and determined that Section 17(5)(d) does not provide a broad interpretation. Instead, it restricts the application solely to instances where goods are utilized by a registered person for their own purposes. The term *"on his own account"* is interpreted to mean that the construction is intended for personal use or serves as a context in which the individual conducting the construction operates their business.

However, the retrospective amendment of the clause (d) of Section 17(5) by the Government now gives rise to further doubts regarding the availability of credit. The wording "Plant or Machinery" appearing in Section 17(5)(d) of the GST enactments has been amended to read as "Plant and Machinery" retrospectively from 1-7-2017 through Finance Act, 2025. However, the blockage of ITC if the said building is on own account has not been amended. Therefore, if the property is constructed with the sole intention to lease the property, the same cannot be said to be on own account and the ITC blockage under Section 17(5)(d) ibid would not come into play in such cases. With the scheme now in vogue in the construction sector, this fight however may only be in respect of the ongoing projects, where the benefit of ITC is still being sought.

IV. CONCLUSION

The intent of the availability of ITC is to mitigate the tax burden on the taxpayer. The availability of ITC is subject to such conditions and restrictions as may be prescribed by the rules framed under the CGST Act. ITC being a creature of legislation, it can exclude specific categories of goods or services from ITC. However, the exclusion of ITC must be meaningful so as not to render it useless after a certain stage in the process of transactions. Exclusion of ITC in certain deserving cases will self-defeat the very concept of ITC in the supply chain. The flow of ITC to the taxpayer must be continuous so that the benefit of the same is available to both the taxpayer and the end user.

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V. REFERENCES

[1] CGST Act 2017

[2] CGST Rules 2017

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