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Analysing developments impacting business

HIGH COURT OF ORISSA ALLOWS INPUT TAX CREDIT ON GOODS AND SERVICES USED FOR CONSTRUCTION OF IMMOVABLE PROPERTY

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Introduction

The Hon'ble High Court of Orissa, vide its order dated 17 April 2019 (Order), in *Safari Retreats Private Limited v Chief Commissioner of Central Goods & Service Tax [W.P. (C) 20463 of 2018]*, has allowed availment of input tax credit (ITC) on goods and services used for construction of immovable property and used in the course or furtherance of business.

The petitioner therein was engaged in the business of constructing shopping malls for the purpose of letting out for commercial purposes. Inputs in the form of cement, sand, steel, aluminum, wires, plywood, paint, escalators, electrical equipment as also and input services such as architect fees etc. were used in construction of the complex that was ultimately leased out for commercial purposes (attracting goods and services tax). Section 17(5)(d) of Central Goods and Services Tax Act, 2017 (CGST Act) restricts ITC on goods and services received by a taxable person for construction of an immovable property on his own account even though such immovable property is used in the course or furtherance of business.

On account of the restriction prescribed in Section 17(5)(d) of the CGST Act, the petitioner was ineligible to avail ITC on aforesaid inputs and input services. The petitioner filed a writ petition challenging the vires of Section 17(5)(d) of the CGST Act and a separate prayer for allowing ITC.

The principal argument taken in the petition was that Section 17(5)(d) of the CGST Act restricts the seamless flow of credit and that denial of ITC is unjust, arbitrary, oppressive and contradictory to the basic rationale of GST. The Petitioner argued that 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 as the Petitioner would be liable to pay goods and services tax (GST) on letting out of such properties for commercial purposes.

The counsel for the Government argued that 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.

Key Highlights of Order

- The purpose of the CGST Act is to provide a uniform law for levy and collection of tax on intra state supply of goods and services, and to prevent multi taxation.
- Section 17(5)(d) of the CGST Act is to be read down and a narrow interpretation of Section 17(5)(d) of the CGST Act is frustrating the objective of the CGST Act.
- If the petitioner is required to pay GST on rental income arising out of the investment on which he has paid GST, he is entitled to avail the ITC for the inputs and input services consumed by them.

Considering the above, the Hon'ble High Court of Orissa allowed ITC on goods and services used for construction of immovable property meant for letting out for commercial purposes (in the course or furtherance of business).

Comment

The Hon'ble High Court of Orissa re-establishes the principle of seamless credit in the supply chain as backbone of GST regime. The judgement opens a horizon for various persons using immovable property for providing taxable supplies with no breakage in tax credit chain. Similar petition has been filed in the case of *Bamboo Hotel and Global Centre (Delhi) Pvt. Ltd [W.P.(C) 5457/2019]* where the Hon'ble High Court of Delhi had issued notices to Union of India and other Respondents.

However, the judgment is short on the reasonings as it has not examined vast latitudes enjoyed by the states in the taxation matters, and therefore likely to be challenged by the states in the Supreme Court.

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