

GIB/MH/DAI ICHI/11-08-1999/SC-10

Supreme Court Category : Input Tax Credit

State : Maharashtra

Order No.: GIB/MH/DAI ICHI/11-08-1999/SC-10

Name of Entry :

Dai Ichi Karkaria Ltd. vs Collector Of Central Excise

Date : 11-08-1999

Breif Issue :

Issue & Fact Of The Case -

The petitioners are mainly carrying on business activity of constructing shopping malls for the purpose of letting out of the same to numerous tenants. Huge Quantities of material and other inputs/ input services are required for construction purpose were purchased on which GST has been paid.

Whether the provisions restricting the credit of Input Tax as per Section 17(5)(d) is applicable to the petitioner company?

Decision of Advance Ruling Authority :

Decision-

Considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by department is frustrating the very objective of the Act, in as much as the petitioner in that case has to pay huge amount without any basis. Further, the petitioner would have paid GST if it is disposed of the property after the completion certificate is granted and in case the property is sold prior to the issue of the completion certificate, he would not be required to pay GST. But here he is retaining the property and is not for own purpose but is letting out the property on which he is covered under GST, but still he has to pay huge amount of GST, to which is not liable.

Provision of Section 17(5)(d) is to be read down and narrow restriction as imposed reading of the provision by Department is not required to be accepted in as much as keeping in mind the language used in (1999) 2 SC 361 (supra) the very purpose of the credit is to give benefit to the assessee.

Prayer as sought by the Petitioner is granted however provision of Section 17(5)(d) could not be hold ultra vires.