

GIB/OD/SAFARI RETREATS/17.04.2019/HC-244

High Court Category : Input Tax Credit

State : Odisha

Order No.: GIB/OD/SAFARI RETREATS/17.04.2019/HC-244

Name of Entry :
SAFARI RETREATS PRIVATE LIMITED

Date : 17-04-2019

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case the petitioners were mainly carrying on business activity of constructing shopping malls for the purpose of letting out of the same to numerous tenants and lessees. Huge quantities of materials and other inputs in the form of Cement, Sand, Steel, Aluminium, Wires, plywood, paint, Lifts, Escalators, Air-Conditioning plant, Chillers, electrical equipments, special facade, DG sets, transformers, building automation systems etc. and also services in the form of consultancy service, architectural service, legal and professional service, engineering service and other services including services of special team of international designers in every sphere of construction of Mall were required for the aforesaid construction purpose and therefore the petitioner company had to purchase/receive these goods and services for carrying out the said construction.

All the goods and services which were purchased/received for such construction were taxable under the CGST Act and OGST Act and as such the petitioner had to pay very huge amounts of Central Goods and Services Tax and Odisha Goods and Services Tax on such purchases. One of the large shopping mall constructed by the petitioner-company at Esplanade had been completed recently and the petitioner had made necessary arrangement for letting out different units of the said shopping mall to different persons on rental basis.

The activity of letting out the units of the shopping mall attracted CGST and OGST on the amount of rent received by the petitioner because the activity of letting out the Units in the said Mall amounted to supply of service under the CGST Act/OGST Act.

The petitioner having accumulated input Credit of GST in respect of purchases of inputs in the form of goods and services was desirous of availing of the credit of input tax charged on the purchase/supply of goods and services which were consumed and used in the construction of the said shopping mall in order to utilise the said input credits to discharge and pay the CGST and OGST payable on the rentals received by the petitioner from the

tenants of the said shopping mall and approached the revenue authorities in this regard. However, the petitioner was advised to deposit the CGST and OGST collected without taking input credit in view of restrictions placed as per section 17(5)(d) and was warned of penal consequences if it did not do so.

The petitioner had been informed by the authorities under the CGST Act and OGST Act that in view of the aforesaid section 17(5)(d) of both the aforesaid Acts the petitioner could not avail the benefit of credit of tax input paid by the petitioner on the purchases of input materials and services which had been used in the construction of the shopping mall for set off, against the CGST and OGST payable on rent received from the tenants of the shopping mall. The petitioner had, thus, to pay very large amounts of CGST and OGST.

The petitioners filed instant writ petition challenging the action of the opposite parties whereby the opposite parties without considering the provisions under section 17(5)(d) held that the provisions of the CGST Act was not applicable in the case of construction of immovable property intending for letting out for rent.

Decision of Advance Ruling Authority :

DECISION:

The very purpose of the Act is to make the uniform provision for levy collection of tax, intra-State supply of goods and services both Central or State and to prevent multi-taxation.

Therefore, the contention which has been raised by the petitioners keeping in mind the provisions of section 16(1)(2) where restriction has been put forward by the legislation for claiming eligibility for input credit has been described in section 16(1) and the benefit of apportionment is subject to section 17(1) and (2). While considering the provisions of section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. Further, the petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate, he would not be required to pay GST. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.

In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under section 17(5)(d).

The writ petition is allowed to the aforesaid extent.