

GIB/OD/SAFARI/17-04-2019/HC-95

High Court Category : Input Tax Credit

State : Odisha

Order No.: GIB/OD/SAFARI/17-04-2019/HC-95

Name of Entry :

Safari Retreats private limited

Date : 17-04-2019

Breif Issue :

Facts & Issue Of The Case :

The petitioner are mainly carrying on business activity of constructing shopping malls for the purposes of renting and letting out to the tenants ,goods and services which the petitioner has purchased for the construction of the malls like- cement, steel, paints, air conditions ,hiring legal and professional services etc., are taxable under the CGST and OGST act . The mall which the petitioner so let out attracts CGST and OGST on the amount received under this act.

By the activity of letting out, petitioner had accumulated input credit worth Rs. 34,40,18,028/- , which he want to use in construction of shopping mall ,but as per Section 17(5) it was blocked. The petitioner as been given advise to pay in cash and not to use ITC. As per section 17(5) the provision- “ goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in course or furtherance of business”, is under block credit.

Decision of Advance Ruling Authority :

Decision :

Court, keeping in mind the provision 16 (1)(2) , in which restrictions has been put forward by claiming eligibility of ITC and the benefit of apportionment is subject to section 17(1) and (2), considering the provision of section 17(5) the petitioner has to pay a huge amount without any basis. In this case the petitioner is using the property for lease and rent, not for his own which he is covered under GST. Still a huge amount of GST is payable by him for which he is not liable .

If the assessee is required to pay GST on the rental income from the source for which he had paid GST, it is required to have input credit on GST, which is required to pay under 17(5)(d) of the CGST Act.