

TAX INFO

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Latest update on GST Law: Information regarding **Important ruling that ITC can be claimed for the construction of let out property** based on the **Judgement issued by Orissa High Court.**

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ITC can be claimed for the construction of let out property

Name of Petitioner	M/s. Safari Retreats Private Limited and another
Name of Respondent	Chief Commissioner of Central Goods & Service Tax & others
Court	Orissa High Court
Date of Judgement	17.04.2019
Order No.	W.P.(C) No.20463 OF 2018

Petitioners are 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 and also services are required for the aforesaid construction purpose. All these goods and services which are purchased/received for such construction are taxable. Petitioner has let out the units of the shopping mall and it is an undisputed fact that the activity of letting out the units of the shopping mall attracts CGST and OGST on the amount of rent received by the petitioner. The petitioner having accumulated input Credit of GST in respect of purchases of inputs in the form of goods and services. 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).

It was contended by the petitioner that the sale of immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such a situation, there is a break in the tax chain and, therefore, there is full justification for denial of input tax credit. However, the position is totally different where the immovable property is constructed for the purpose of letting out. On the let out property supply chain does not break as rental income is subject to levy of GST.

It was held that the petitioner 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, the provision of section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, the very purpose of the credit is to give benefit to the assessee.

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 tax credit paid on input goods and services.

Suresh Aggarwal, Advocate, Tax Consultant

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>