GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

DIVISION BENCH – COURT NO. 3

APL/05/BUR/2026

M/s Flora Kingdom Farm Resort **……..Appellant**

Versus

Commissioner of Commercial Taxes,

Commercial Taxes Department, Government of Karnataka **…….Respondent**

Counsel for Appellant	**Counsel for Respondent**
Sri. Pradeep Jogi	Dr. Ramya S.
Chartered Accountant	Departmental Representative

Hon'ble Shri Prabhakaran P.M., Judicial Member

Hon'ble Shri Ravi Jesuraj S., Technical Member (State)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

Whether Remand Order: No **Date: 30-09-2026**

1.	GSTIN	29AAFFF7564B1ZD
2.	Appeal Case Reference No.	Appeal/BUR/5/2026
	Appeal Date	13-03-2026
3.	Name of the Appellant	M/s Flora Kingdom Farm Resort, D.No. 3-155/1A4, 3-155/1A3, Mallar, Kaup, Udupi, Karnataka – 574 106

		Through Sri. Pradeep Jogi, Chartered Accountant
4.	Name of the Respondent	1. Commissioner of Commercial Taxes, Karnataka; 2. Joint Commissioner of Commercial Taxes (Appeals), Mangaluru. 3. Assistant Commissioner of Commercial Taxes (Audit), Udupi. Through Departmental Representative, State Commercial Taxes Department
5.	Order Appealed Against	Order-in-Appeal No. GST/AP/389/2024-25 passed by the Joint Commissioner of Commercial Taxes (Appeals), Mangaluru
	Order Type	Order-in-Appeal under Section 107(11), affirming Demand Order
	Reference No	ZD291225071930A affirming Order No. ACCT/ADT/UDP/73/63/2024-25 dated 13-08-2024 in Form GST DRC-07 (Ref. ZD2908240514363)
	Order Date	08-12-2025
6.	Personal Hearing	18-08-2026 and 21-09-2026
7.	Order in Brief	Appeal dismissed. For 2019-20, Section 17(5)(d) must be read with the defined expression “plant and machinery”, substituted with effect from 01.07.2017; the resort building and its civil structures are excluded from that definition. Even under the unamended clause, the functionality test in Safari Retreats was

<table>
<tr><td></td><td></td><td colspan="3">framed for buildings other than a hotel or a cinema theatre, and was not available to the resort building. The resort was built on the appellant's own account, as the setting of its own hotel, restaurant and events business. All ITC the appellant identified as outside clause (d) (₹1,47,922.92) was already allowed; nothing further was identified. Interest and penalty sustained.</td></tr>
<tr><td colspan="5">Summary of Order</td></tr>
<tr><td>8.</td><td>If Demand order then whether Demand Quantified</td><td colspan="3">Yes. Tax ₹8,45,972, applicable interest ₹1,607 and penalty ₹84,598; total ₹9,32,177, confirmed.</td></tr>
<tr><td rowspan="3">9.</td><td colspan="4">For Other Orders and Demand Orders which are Not Quantified</td></tr>
<tr><td>Issues as Raised by Proper Officer</td><td>Issues as determined by Appellate/ Revisional Authority</td><td>Order by GST Appellate Tribunal</td></tr>
<tr><td>ITC on goods and services used to construct an immovable property (resort) was proposed as blocked under Section 17(5)(d) of the CGST/KGST Act.</td><td>The credit was held blocked and demand of ₹9,32,177 was upheld.</td><td>The Order-in-Appeal did not give reasons; the Tribunal supplied reasons under Section 113(1). The 2025 amendment operates from 01.07.2017; the functionality test does not apply to the resort building; construction was on own account; no further credit outside clause (d) was</td></tr>
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			established. Interest and penalty sustained.
10.	If remanded with Directions: Not applicable		

FINAL ORDER

(Per: Sh. Ravi Jesuraj S., Technical Member (State), for the Bench)

A. THE APPEAL IN BRIEF

1. The question involved in this appeal is whether a resort may claim input tax credit on the goods and services used in constructing its own building. For the financial year 2019-20, the answer turns on two expressions in clause (d) of Section 17(5) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and of the Karnataka Goods and Services Tax Act, 2017 ("the KGST Act"). The first is "plant and machinery", which was substituted for "plant or machinery" in 2025 effective from 01.07.2017. The second is "on his own account". Both must be examined in the light of the decision of the Hon'ble Supreme Court in *Chief Commissioner of Central Goods and Service Tax v. Safari Retreats (P.) Ltd.*, 2024 INSC 756 ("*Safari Retreats*").
2. The appellant, M/s Flora Kingdom Farm Resort, is a partnership firm constituted on 08.02.2018 and registered under GSTIN 29AAFFF7564B1ZD. It runs a resort at D.No. 3-155/1A4, 3-155/1A3, Mallar, Kaup, Udupi, where it supplies room accommodation (SAC 996311) and restaurant and catering

services (SAC 996332), and where it also hosts weddings, events and photo shoots.

3. The appellant has filed this appeal under Section 112 against Order-in-Appeal No. GST/AP/389/2024-25 dated 08.12.2025 (Ref. ZD291225071930A) ("the Order-in-Appeal"), passed under Section 107(11) by the Joint Commissioner of Commercial Taxes (Appeals), Mangaluru ("the First Appellate Authority"). That order affirmed the adjudication order No. ACCT/ADT/UDP/73/63/2024-25 dated 13.08.2024 in Form GST DRC-07 (Ref. ZD2908240514363) ("the Order-in-Original"), passed under Section 73 by the Assistant Commissioner of Commercial Taxes (Audit), Udupi ("the Adjudicating Authority").

4. The Adjudicating Authority held that the credit availed by the appellant in 2019-20 on goods and services used to build the resort was blocked by Section 17(5)(d). After allowing credit on the items the appellant showed to be outside the clause, it confirmed tax equivalent to ineligible Input tax credit of ₹8,45,972 (CGST ₹4,22,986 and SGST ₹4,22,986), interest of ₹1,607 and penalty of ₹84,598, in all ₹9,32,177. The First Appellate Authority upheld that demand.

5. It was submitted on behalf of the appellant that the resort is the very apparatus of its trade and is therefore a "plant"; that a building put to taxable use is not built "on his own account"; that the authorities below ignored *Safari Retreats*; that the balance credit was disallowed without examining the invoices; and

that the interest and penalty must fall with the tax. It was submitted on behalf of the Respondent that clause (d) has been amended retrospectively with effect from 01.07.2017 to use the defined expression "plant and machinery", and that the clause, as amended, blocks the credit claimed.

6. For the reasons that follow, we hold that the conclusion of the authorities below is correct, and that the matters not discussed in the Order-in-Appeal are answered by the reasons recorded in this order; that for 2019-20 the resort building and its civil structures cannot be "plant and machinery" as defined, and that even under the unamended clause the functionality test in *Safari Retreats* did not extend to a hotel or resort building; that the resort was built on the appellant's own account, as the setting of its own hotel, restaurant and events business; that every item the appellant identified as lying outside clause (d) has already been allowed; and that the interest and penalty were correctly levied.

7. On the points in issue, the CGST Act and the KGST Act are in the same terms, and each was separately amended in 2025 with effect from 01.07.2017. A reference in this order to a provision of the CGST Act, or of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules"), includes the corresponding provision of the KGST Act and of the Karnataka Goods and Services Tax Rules, 2017.

B. BACKGROUND AND PROCEEDINGS BELOW

Inspection and pre-notice intimation

8. On 10.01.2024, officers of the Deputy Commissioner of Commercial Taxes (Enforcement), Udupi, inspected the resort under Assignment Note No. JCCT(Enf)/WZ/MNG/INSP-716/2023-24 dated 30.12.2023 of the Joint Commissioner of Commercial Taxes (Enforcement), West Zone, Mangaluru, in the presence of Sri Gaurav Shridhara Shenava, a partner. By its letter dated 29.01.2024, the appellant furnished its registers, financial statements and sales details.

9. On 12.04.2024, the Deputy Commissioner (Enforcement) issued an intimation in Form GST DRC-01A (Ref. ZD2904240295375) under Section 73(5) read with Rule 142(1A) of the CGST Rules. It stated that the appellant had availed credit through its returns in Form GSTR-3B for 2019-20 on goods and services procured "for construction" of an immovable property, namely a commercial complex, and that such credit was not admissible under Section 17(5)(d). It proposed tax of ₹9,93,894 (₹4,96,947 each under CGST and SGST) and interest of ₹7,00,900 (₹3,50,450 under each head, for 1,430 days), in all ₹16,94,794. The appellant filed a reply in Part B of the form on 22.04.2024.

Show cause notice and reply

10. The Deputy Commissioner (Enforcement) then issued a show cause notice in Form GST DRC-01 (No. DCCT/Enf/UDP/DRC-01/716/2023-24; Ref.

ZD290524061797T) dated 20.05.2024 under Section 73(1). It repeated the proposal of tax and interest, and stated that a penalty of ₹99,390 (₹49,695 under each head) would be payable if the tax and interest were not paid within thirty days of the notice. The amount proposed thus came to ₹17,94,184. The case was then assigned to the Adjudicating Authority by Assignment No. ADJ/778/2024-25 dated 03.06.2024 (shown in one place in the Order-in-Original as 06.06.2024).

11. The appellant replied on 20.06.2024. The reply is headed as a reply in Part B under Rule 142(2A), but the Order-in-Original treats it, and both sides have treated it, as the reply to the show cause notice. The Order-in-Original reproduces it. It matters because it states the appellant's own case in its own words:

    (a) It was submitted that the expression "on his own account" means construction "for his own purposes"; the "construction of office building for one's own business purposes" was given as an example.

    (b) It was submitted that the appellant had availed credit on goods and services "procured for construction of Immovable Property in the nature of Commercial Complex, which is being used in the course or furtherance of business", and that it "is engaged in the business of renting the premise for Destination weddings, Events, Stays, renting as a Photo shoot Location on various occasions".

(c) It was submitted that credit had been denied even on furniture and fittings, electrical equipment, air-conditioners and a generator, and the appellant offered to produce the books in which these had been capitalised.

(d) Reliance was placed on the decision of the Hon'ble Orissa High Court in *Safari Retreats (P.) Ltd. v. Chief Commissioner, CGST*, 2019 SCC OnLine Ori 443, then under appeal in the Hon'ble Supreme Court, and on the decision of the Hon'ble Tripura High Court in *SR Constructions v. Union of India*. On interest, reliance was placed on Section 50(3), Rule 88B, Circular No. 192/04/2023-GST dated 17.07.2023 and the decision of the Hon'ble Calcutta High Court in *Ranjan Sarkar v. Assistant Commissioner of State Tax*.

Personal hearing and invoice-wise statement

12. On an intimation dated 23.07.2024, a personal hearing was held on 30.07.2024. (The Order-in-Original refers to it once as 31.07.2024; nothing turns on the discrepancy.) The appellant's representative submitted that many of the invoices had never gone into the building and had been capitalised under other heads, and undertook to furnish an invoice-wise list.

13. By a written submission dated 07.08.2024, and a list of invoices sent by e-mail on 09.08.2024, the appellant identified purchases of ₹1,87,68,688.13 across its years of construction, under five heads: furniture and fittings, electrical equipment, air-conditioners, generators, and items expensed off. For

2019-20, the list identified three heads: electrical equipment (ITC ₹62,000), air-conditioners (ITC ₹80,944.60) and purchases expensed off (ITC ₹4,978.32), aggregating ₹1,47,922.92. No furniture or generator appears in the list for 2019-20.

Adjudication

14. By the Order-in-Original dated 13.08.2024, the Adjudicating Authority did four things:

(a) It declined to follow the decision of the Hon'ble Orissa High Court in *Safari Retreats*, because the Revenue's special leave petition against that decision was pending and the matter was, in its words, "sub-judice".

(b) It accepted the appellant's list for 2019-20, and excluded the ITC on the invoices in it. The order does not state the amount excluded, but the figures show it: the tax fell from ₹9,93,894 to ₹8,45,972, a reduction of ₹1,47,922, which is the ITC of ₹1,47,922.92 on the three heads the appellant identified.

(c) It accepted the appellant's method of computing interest under Rule 88B. It levied no interest under SGST, since the SGST balance in the electronic credit ledger had always covered the disputed credit. Under CGST it levied ₹1,607, on ₹1,37,934 and ₹10,228, from 23.07.2024, on the footing that the ledger balance had then fallen below the disputed credit. (The order describes the first amount as credit of "Feb-2019", an evident slip for February 2020, since the whole demand concerns 2019-20.)

(d) It imposed a penalty of ten per cent. of the tax under Section 73(9), since the tax had not been paid within thirty days of the notice.

15. The Order-in-Original also states, in one sentence, that the appellant "failed to submit any reply" to the observation, and in the next proceeds to consider the reply. The first sentence is plainly a stray remnant of a standard form. The record shows that a full reply was filed and considered, and we proceed on that footing.

16. The figures, as they stood at each stage, are these (in rupees):

Head	Proposed (DRC-01)	Confirmed: CGST	Confirmed: SGST	Confirmed: Total
Tax	9,93,894	4,22,986	4,22,986	8,45,972
Interest	7,00,900	1,607	Nil	1,607
Penalty	99,390	42,299	42,299	84,598
Total	**17,94,184**	**4,66,892**	**4,65,285**	**9,32,177**

First appeal

17. The appellant appealed on 15.11.2024 (Appeal No. GST/AP/389/2024-25) and paid the pre-deposit under Section 107(6). By then the Hon'ble Supreme Court had decided *Safari Retreats* on 03.10.2024, and the grounds of appeal rested on it: the resort was a "plant" on the functionality test, and a building from which taxable income is earned is not built "on his own account".

18. The grounds also contended that clause (d), if not read down, would violate Articles 14 and 300A of the Constitution. They relied on *CIT v. Taj Mahal*

Hotel, Secunderabad, (1971) 3 SCC 550, and *CIT v. Anand Theatres*, (2000) 5 SCC 393, for the meaning of "plant".

19. At the hearing on 21.06.2025, Sri Gaurav Shridhara Shenava, partner, stated that credit had been taken on building materials, machinery, air-conditioners, generators and transformers, relied on *Safari Retreats*, and filed additional submissions.

Order of the First Appellate Authority

20. The First Appellate Authority framed a single question: whether the Adjudicating Authority was justified in restricting credit on the materials used to construct a commercial building. It reproduced clause (d) in its original form, with the words "plant or machinery"; referred to Section 3(26) of the General Clauses Act, 1897 for the meaning of immovable property; and held that the decisions cited were "not applicable", since Section 17(5) "unambiguously and in clear terms" restricts credit. It upheld the interest under Section 50 and the penalty under Section 73(9), and dismissed the appeal.

21. The Order-in-Appeal does not refer to *Safari Retreats*, which had been decided fourteen months earlier and on which the appeal was founded, or to the amendment to clause (d), which had come into force before the order was passed. Nor does it refer to the appellant's plea that the balance credit included items that never went into the building.

22. It describes the appellant's case as the construction of a commercial complex "for the purpose of letting out the same for monthly rent". The grounds of appeal spoke in general terms of leasing and rentals, but the appellant has not claimed that the resort, or any part of it, was let out on monthly rent, and nothing on record shows that it was.

C. PROCEEDINGS BEFORE THE TRIBUNAL

23. The appeal in Form GST APL-05 was filed on 13.03.2026. It prays that both orders be set aside, that the credit be held admissible, and that the demand of ₹9,32,177 be quashed. The form records that nothing was admitted, and that the pre-deposit of ten per cent. of the tax in dispute, ₹84,597.20 (₹42,298.60 under each head), has been paid.

24. The Order-in-Appeal was communicated on 08.12.2025. The appeal was filed five days after the expiry of three months from that date. Section 112(1) reads:

> "(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing appeal before the Appellate Tribunal under this Act, whichever is later."

25. By Notification S.O. 4220(E) dated 17.09.2025, issued by the Ministry of Finance, the Government has fixed 30.06.2026 as that date for orders communicated before 01.04.2026. The appeal is within time, and no question of condonation arises.

26. We heard CA Pradeep Jogi, learned Authorised Representative, assisted by Sri Gaurav Shridhara Shenava, partner, for the appellant, and Dr. Ramya S., learned Departmental Representative, for the Respondent, on 06.08.2026. The Respondent then filed written submissions dated 02.09.2026 (referred to in the appellant's filings as cross-objections). The appellant filed a synopsis and a rejoinder, both dated 20.09.2026, with Annexure-A. We have taken all of these on record and considered them.

27. The appellant has not questioned the jurisdiction of the officer who issued the notice or of the officer who decided it, or the time within which either acted. The proceedings were initiated under Section 73, which covers credit wrongly availed for reasons other than fraud, wilful misstatement or suppression of facts, and no such element was alleged. We therefore turn to the merits.

D. CASE OF THE APPELLANT

28. The following submissions were made on behalf of the appellant by the learned Authorised Representative:

    (a) It was submitted that the resort is a "plant". In *Safari Retreats*, it was held by the Hon'ble Supreme Court that "plant or machinery" in clause (d) is distinct from the defined expression "plant and machinery", so

that the exclusion of buildings from the definition does not govern clause (d). A building which is the essential tool of a business is a "plant" on the functionality test. The resort, with its rooms, event spaces and installations, is not a mere shelter for the business but the apparatus through which accommodation, events and banqueting are supplied.

(b) It was submitted that the resort was not built "on his own account", since construction undertaken to make taxable supplies is not construction on one's own account; the expression must be read purposively, and parts of the resort are let out for weddings, events and photo shoots.

(c) It was submitted that the orders below are unreasoned. The First Appellate Authority, deciding the appeal more than a year after *Safari Retreats*, did not deal with a judgment binding under Article 141; and the Adjudicating Authority was wrong to disregard a High Court decision merely because an appeal against it was pending.

(d) It was submitted that the chain of credit is broken. Denying credit turns the tax on construction into a cost and cascades into the price of taxable services.

(e) It was submitted that there was no invoice-wise scrutiny. Electrical goods, switchgear, sanitaryware, piping and specialised fixtures were

lumped together with civil work, without asking whether they are plant or machinery, or construction inputs at all.

(f) It was submitted that interest under Section 50(3) and Rule 88B arises only on credit wrongly availed and utilised; that the ledger balances were sufficient; and that the penalty must fall with the tax.

(g) It was submitted that Section 17(5) is an exception to the general rule in Section 16 and must be construed strictly; and that an interpretation which treats a business that builds in order to make taxable supplies in the same way as one that builds for its own use violates Article 14 of the Constitution.

29. In the synopsis and rejoinder of 20.09.2026, the following further submissions were made on behalf of the appellant:

(a) It was submitted that the appellant "does not dispute" that the Finance Act, 2025 has substituted "plant and machinery" for "plant or machinery" in clause (d) with effect from 01.07.2017. Without entering into the larger question of the effect of the amendment, the appellant invited the Tribunal to decide whether the other conditions of clause (d) are met.

(b) It was submitted that the Respondent must establish, invoice by invoice, that the goods or services were received by the taxable person, were used for construction, resulted in an immovable property, and were used on the taxable person's own account; that clause (d) is not

a blanket bar on all credit spent in establishing a resort; and that capitalisation in the books is not conclusive.

(c) It was submitted that the Order-in-Original itself accepted the need for invoice-wise segregation, and that the items so identified for 2019-20, aggregating ₹1,47,922.92 as shown in Annexure-A, do not represent the whole of the disputed demand of ₹8,45,972.

(d) It was submitted that interest cannot mechanically follow the tax demand, and must independently satisfy Section 50(3) read with Rule 88B with reference to actual utilisation.

(e) It was submitted that the penalty under Section 73(9), imposed in proceedings not founded on fraud or suppression, is consequential and must be deleted or recomputed to the extent the credit is allowed.

30. The appellant accordingly prays that the orders be set aside or modified; that credit be allowed on movable assets, machinery, equipment, furniture, fixtures and other inward supplies that have not become part of the immovable property, "subject to verification"; and that the tax, interest and penalty be deleted or recomputed.

E. CASE OF THE RESPONDENT

31. The learned Departmental Representative supported the orders below. The following submissions were made on behalf of the Respondent, orally and in the written submissions of 02.09.2026:

(i). It was submitted that Section 17(5) opens with a non obstante clause that overrides Section 16(1). Clause (d) blocks credit on construction of an immovable property on one's own account "including when" the goods or services are used in the course or furtherance of business.

(ii). It was submitted that Section 124 of the Finance Act, 2025 has substituted "plant and machinery" for "plant or machinery" in clause (d) with effect from 01.07.2017; that the definition of "plant and machinery" excludes land, buildings and other civil structures; and that the amendment is curative and clarificatory.

(iii). It was submitted that, even in *Safari Retreats*, the question of fact was framed for buildings other than a hotel or a cinema theatre; that a resort is, in substance, a building housing a hotel business; and that input tax credit is a statutory concession, available only within the limits the legislature has drawn.

(iv). It was submitted that the Adjudicating Authority has already excluded the standalone assets, and that the tax that remains relates to cement, steel, stone, bricks, tiles, sand and sanitary items built into the structure.

(v). It was submitted that interest under Section 50(3) arises on credit wrongly availed and utilised, and was computed under Rule 88B on the actual ledger position; and that the penalty under Section 73(9) follows upon non-payment within thirty days of the notice.

F. POINTS ARISING FOR DETERMINATION

32. On the pleadings, the orders below and the submissions made, the following points arise:

(i). Does the omission of the authorities below to discuss *Safari Retreats* affect their conclusion?

(ii). For 2019-20, and in the light of the amendment made with effect from 01.07.2017, can the resort, or any civil structure in it, be "plant and machinery"; and could the resort have been a "plant" on the functionality test even under the unamended clause?

(iii). Was the resort constructed "on his own account", & does the hosting of weddings, events & photo shoots take any part of it outside clause (d)?

(iv). Does any part of the balance credit of ₹8,45,972 fall outside clause (d)?

(v). Are the interest and penalty sustainable?

G. DISCUSSION AND FINDINGS

Point (i): Treatment of Safari Retreats in the orders below

33. Section 75(6) and Section 107(12) read:

"75. (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision."

"107. (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision."

34. It was held by the Hon'ble Supreme Court in *Kranti Associates (P) Ltd. v. Masood Ahmed Khan*, (2010) 9 SCC 496, that a quasi-judicial authority must record reasons for its conclusions. Reasons show that the mind of the authority was applied to the case the party actually made, and they enable a superior forum to review the decision. Sections 75(6) and 107(12) give statutory form to that principle.

35. When the Order-in-Original was passed on 13.08.2024, *Safari Retreats* was pending before the Hon'ble Supreme Court. The Adjudicating Authority noted the pendency and decided the case on the statute as it stood. The Hon'ble Supreme Court decided the appeal seven weeks later, and the point has no practical consequence now.

36. When the Order-in-Appeal was passed, *Safari Retreats* had been decided and clause (d) had been amended. The First Appellate Authority rested its decision on the plain words of Section 17(5). When a judgment of the Hon'ble Supreme Court is cited before an appellate authority, the authority ought to refer to it and say, even briefly, why it does or does not apply. The appellant had cited *Safari Retreats*, and it would have been proper for the First Appellate

Authority to refer to it, and to the amendment to clause (d) and the appellant's plea about the balance credit.

37. These matters have now been argued fully before us. The amended statute is before us, and its effect depends on no disputed fact. The facts bearing on the balance credit were placed on record by the appellant itself, before both authorities and again before us. This Tribunal is the final fact-finding forum. Section 113(1) reads:

> "(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."

38. We have therefore examined every contention afresh, and we decide these matters ourselves under Points (ii) to (v).

Finding on Point (i): The conclusion reached by the authorities below is correct. The First Appellate Authority ought to have referred to *Safari Retreats* when it was cited. The matters not discussed in the Order-in-Appeal have been fully argued before us and are decided in this order. The appellant has suffered no prejudice.

Point (ii): The resort building and "plant and machinery"

Statutory scheme

39. Section 16(1) reads:

> *"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."*

40. Section 17(5), so far as relevant, and after the amendment of 2025, reads:

> *"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*
>
> *(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*
>
> *(d) 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 the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;"

41. Explanation 1 at the end of Section 17 defines "plant and machinery":

"Explanation 1.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises."

The decision in Safari Retreats

42. Before the amendment, clause (c) used the defined expression "plant and machinery", while clause (d) used "plant or machinery". In *Safari Retreats*, it was held by the Hon'ble Supreme Court that clauses (c) and (d) of Section 17(5) and Section 16(4) are constitutionally valid, and that input tax credit is a statutory concession and not a constitutional right. It was further held that the word "plant" in clause (d), as it then read, is not confined by the definition

of "plant and machinery", and so is not subject to that definition's exclusion of buildings. Whether a building is a "plant" was held to be a question of fact, to be answered by the functionality test: whether, given the nature of the taxpayer's business, the building is essential to making its outward supply. The Hon'ble Supreme Court remitted that question to the High Court, framing it in respect of "a mall, warehouse or any building other than a hotel or a cinema theatre".

The Finance Act, 2025 amendment

43. Thereafter, on the recommendation of the GST Council at its 55th meeting, Section 124 of the Finance Act, 2025 (7 of 2025), which received the assent of the President on 29.03.2025, substituted "plant and machinery" for "plant or machinery" in clause (d) of Section 17(5), and provided that the words "shall be deemed to have been substituted with effect from the 1st day of July, 2017". It renumbered the existing Explanation at the end of Section 17 as Explanation 1, and inserted Explanation 2, which reads:

> *"Explanation 2.—For the purposes of clause (d) of sub-section (5), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery"."*

44. Section 124 was brought into force on 01.10.2025 by Notification No. 16/2025-Central Tax dated 17.09.2025. The Karnataka Goods and Services Tax (Amendment) Act, 2025, notified on 02.09.2025, made the same amendment to the KGST Act, also with effect from 01.07.2017. The CGST and SGST components of the demand are therefore governed by the same law.

Clause (d) as it now reads

45. It was held by the Hon'ble Supreme Court in *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283, and in *Indian Aluminium Co. v. State of Kerala*, (1996) 7 SCC 637, that a competent legislature may amend a law with retrospective effect, and that the law so amended governs the periods to which it is made to apply. Section 124 of the Finance Act, 2025 and the corresponding State amendment have been made to apply from 01.07.2017. This Tribunal must therefore read clause (d), for every tax period from that date, including 2019-20, as containing the words "plant and machinery". That expression is defined in Explanation 1, and the definition expressly excludes "land, building or any other civil structures". We apply clause (d) in that form.

46. In doing so, we respectfully follow *Safari Retreats* in every respect. That judgment construed clause (d) in the words it then bore. We are required to apply clause (d) in the words it is now deemed always to have borne. The validity of the amendment is not questioned before us, and it was fairly submitted on behalf of the appellant that the amendment operates from

01.07.2017. In any event, a tribunal created by statute does not sit in judgment over the validity of the law it administers. The challenges under Articles 14 and 300A, raised in the first appeal and, as to Article 14, repeated in the grounds before us, are directed against clause (d) itself. They are answered by *Safari Retreats*, in which the validity of the clause was upheld.

47. A resort building is a building. However central it may be to the business carried on within it, it cannot be “plant and machinery” as defined, because the definition expressly leaves buildings and civil structures out. The same is true of the resort’s other civil structures: its halls, lawns, pathways, compound walls and the like.

48. The appellant’s case does not succeed even on the words clause (d) bore before the amendment. It was held by the Hon'ble Supreme Court in *Chief Commissioner of Central Goods and Services Tax v. Safari Retreats Private Limited* **that whether a mall, a warehouse, or any building other than a hotel or a cinema theatre is a "plant" within the meaning of the expression "plant or machinery" in Section 17(5)(d) is a question of fact.** The question must be answered by applying the functionality test, having regard to the business of the registered person and the role the building plays in that business. **Hotels and cinema theatres were thus kept outside that question.** In doing so, the Hon’ble Supreme Court noted the decision in *CIT v. Anand Theatres*, (2000) 5 SCC 393, in which it was held that a “building used for running of a hotel or carrying on cinema business cannot be held to

be a plant". Such a building is the premises in which the business is carried on, not the apparatus with which it is carried on, and it remains a "building" for the purpose of depreciation under the Income-tax Act, 1961.

49. The appellant's resort supplies room accommodation and restaurant services. That is the business of a hotel, and the appellant itself relied in the first appeal on its supply of hotel accommodation. The resort building is, in substance, a hotel building. Even under the unamended clause, therefore, the functionality test, as the Hon'ble Supreme Court framed it, was not available to bring the resort building within the words "plant or machinery". The submission of the Respondent on this point is accepted. The decision in *Taj Mahal Hotel*, relied on in the first appeal, does not assist the appellant. It concerned sanitary and pipeline fittings installed in a hotel, under the Indian Income-tax Act, 1922, whose definition of "plant" was inclusive. It did not hold that a hotel building is a "plant". In any event, clause (d) now uses an expression that the CGST Act itself defines, and it is that definition which governs.

50. The argument that denial of credit breaks the chain and cascades into price is, in truth, an argument against the policy of clause (d). The Hon'ble Supreme Court upheld the validity of the clause in *Safari Retreats*. It was held by the Hon'ble Supreme Court in *Jayam & Co. v. Assistant Commissioner*, (2016) 15 SCC 125, that input tax credit is a concession created by statute, and not a vested right, and that it is available only to the extent and on the conditions the statute prescribes.

Finding on Point (ii): For 2019-20, clause (d) of Section 17(5), under both the CGST Act and the KGST Act, must be read with the words "plant and machinery", as defined in Explanation 1 to Section 17. The resort building and its other civil structures are excluded from that definition. Even under the unamended clause, the functionality test, as framed by the Hon'ble Supreme Court in *Safari Retreats*, did not extend to a hotel, and so was not available to the resort building. Credit on goods and services received for constructing them is blocked, provided the construction was on the appellant's own account, which we examine next.

Point (iii): Construction "on his own account"

51. It was submitted on behalf of the appellant that construction for a taxable business is never construction on one's own account. The submission cannot be accepted. Clause (d) blocks credit on construction on one's own account "including when such goods or services or both are used in the course or furtherance of business". If use in business were enough to take a building outside the clause, those words would have no work to do. An interpretation that renders statutory words otiose is to be avoided. Nor does the rule of strict construction help the appellant. An exception in a taxing statute is read strictly, but it is read as it is written. Strict construction does not permit the words "including when such goods or services or both are used in the course or furtherance of business" to be left out.

52. In *Safari Retreats*, it was held by the Hon'ble Supreme Court that construction is on a taxable person's own account when it is made for his personal use and not for service, or when it is to be used by the person constructing it as a setting in which business is carried out; and that construction cannot be said to be on a taxable person's own account if it is intended to be sold or given on lease or licence. The line so drawn is not between business use and personal use. It is between a building the taxpayer uses as the setting of its own business, and a building it intends to sell, lease or license to someone else.

53. The amendment of 2025 altered the words "plant or machinery". It did not touch the words "on his own account", and Explanation 2 is confined to the former. The explanation of "on his own account" given by the Hon'ble Supreme Court therefore governs that expression, and we apply it. The question is then one of fact: was the resort built as the setting of the appellant's own business, or for sale, lease or licence to others?

54. The appellant's own reply answers this question. In its reply dated 20.06.2024, the appellant explained that construction "on his own account" means construction "for his own purposes". It gave the example of an office building built "for one's own business purposes". It then stated that the "reasonable inference" from the expression "is to disallow credit of the inputs to any person [who] constructs the immovable property to use in his own business". The appellant thus accepted that clause (d) denies credit to a person who constructs an immovable property for use in his own business. In the same

reply, the appellant described the resort as a commercial complex "being used in the course or furtherance of business", and described itself as "engaged in the business of renting the premise for Destination weddings, Events, Stays, renting as a Photo shoot Location". The two statements, read together, settle the point. By the appellant's own explanation, a building constructed for use in one's own business is constructed on one's own account. The appellant has built the resort for use in its own business. The resort is, therefore, constructed on the appellant's own account. The record points the same way. The appellant is registered for, and supplies, room accommodation (SAC 996311) and restaurant and catering services (SAC 996332). In Form GST APL-05 it describes its business as “Resort, Restaurant, Convention Centre and Hospitality Services”. A guest who takes a room receives the appellant’s own supply of accommodation. The room remains part of the appellant’s premises, under its control and management; it is not made over to another person to carry on that person’s business. The same is true of the kitchens, dining areas and service spaces. As for the lawns, halls and locations used for weddings, events and photo shoots, the appellant has not shown that any of them was handed over to a third party under a lease or licence, as distinct from being used by the appellant to provide its own services, with its own staff, facilities and management. No lease deed, licence agreement or invoice for the renting of immovable property has been produced. Nothing shows that any part of the resort was designed or built for letting to others. The word “renting” in the

appellant's reply does not alter this. The appellant used it of "Stays" as well, which are plainly its own supplies of hotel accommodation. It is the substance of the supply, not the label, that decides the matter.

55. Section 155 of the Act reads:

> *"155. Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."*

56. A taxpayer who says that part of its building was built for licence to others, and so lies outside clause (d), must therefore prove it by evidence identifying that part and the credit attributable to it. The appellant has done neither. The Respondent, for its part, need not prove afresh what the appellant has itself stated: that the goods and services were received, that they were used for construction, that the result was an immovable property, and that it was put to use in the appellant's own business.

57. The decision of the Hon'ble Tripura High Court in *SR Constructions v. Union of India*, W.P.(C) No. 399 of 2022, decided on 04.04.2023, does not assist the appellant. In that case, it was held that a works contractor who built a hotel for its owner, M/s Hotel Polo Pvt. Ltd., and supplied works contract services to that owner, was not barred by Section 17(5)(c) from taking credit on its inward supplies. The appellant is not a works contractor building for another; it is the owner who built for itself.

Finding on Point (iii): The resort was built as the setting in which the appellant carries on its own hotel, restaurant and events business, and was therefore constructed on its own account. The appellant has not shown that any part of it was built for sale, lease or licence to others. Credit on goods and services received for constructing the resort building and its civil structures is blocked by clause (d).

Point (iv): The balance credit

58. Clause (d) does not block every purchase made by the owner of a resort. It blocks only goods and services "received ... for construction of an immovable property". Two questions must therefore be asked of every disputed item. First, was it received for the construction of the building or another civil structure? If it was not, as with furniture, movable fixtures, or equipment bought and used as such, clause (d) is not engaged, and eligibility is governed by the rest of Sections 16 and 17. Second, if it was, is the resulting property "plant and machinery" as defined? If so, the credit is not blocked; if not, it is.

59. In answering those questions, neither the books of account nor the label given to an item can be decisive. The words "to the extent of capitalisation" in the Explanation to Section 17(5) qualify the extended meaning of "construction"; they do not make the fixed-asset register the test of what is construction. Capitalisation under a separate head is a relevant circumstance, and the Adjudicating Authority rightly gave weight to it. But an item does not escape the clause merely because it was capitalised separately, nor fall within it

merely because it was not. The answer depends on what the item is and why it was acquired. We accept, with the appellant, that clause (d) is not a blanket bar on all credit spent in establishing a resort.

60. The record shows exactly what was excluded. The tax proposed was ₹9,93,894, and the Adjudicating Authority reduced it to ₹8,45,972. The difference, ₹1,47,922, corresponds to the three heads the appellant itself identified for 2019-20, first in its submission of 07.08.2024 and the list of 09.08.2024, and again in Annexure-A to its rejoinder: electrical equipment (ITC ₹62,000), air-conditioners (ITC ₹80,944.60) and purchases expensed off (ITC ₹4,978.32), together ₹1,47,922.92. Every invoice in the appellant's own list for 2019-20 was allowed, as the figures show, including those of Maya Electricals & Hardware, Lewis Electricals and Power Tools, Power Tech Switch Gear and Solution, Refrigeration Servicing Centre, Rainbow Poly Products and Janatha Publicity Franchise.

61. The note to Annexure-A says that ₹1,47,922.92 is not the whole of the disputed demand of ₹8,45,972. That is true, but the appellant identifies nothing beyond it. Its prayer seeks credit on movable assets, machinery, equipment, furniture, fixtures and other supplies "subject to verification", without naming a single further invoice, supplier or category. The complaint that electrical goods and switchgear were treated as civil work is answered by the appellant's own list, in which those invoices appear and were allowed. For

sanitaryware, piping and fixtures, the appellant has not pointed to a single invoice.

62. It was submitted on behalf of the Respondent that the balance consists of cement, steel, stone, bricks, tiles, sand and sanitary items built into the structure. The appellant has not said otherwise of any invoice. Nor has it shown that any such item, with the structure, forms apparatus, equipment or machinery fixed to earth and used for making outward supplies, so as to be "plant and machinery" as defined.

63. It was submitted on behalf of the appellant that it is for the Respondent to prove, invoice by invoice, that each item went into construction. We are unable to accept the submission. Section 155 places the burden of proving eligibility on the person who claims the credit. The Adjudicating Authority did not itemise the balance, and its order would have been the better for doing so. However, the balance is simply what remains after everything the appellant identified was allowed. The appellant has had three opportunities, before the Adjudicating Authority, before the First Appellate Authority and before us, to point to anything else, and has not done so.

Finding on Point (iv): The Adjudicating Authority allowed all the ITC that the appellant identified for 2019-20 as falling outside clause (d), namely ₹1,47,922.92. The appellant has identified nothing further, and has not shown that any part of the balance credit of ₹8,45,972 lies outside clause (d) or is "plant and machinery" as defined. The balance credit is blocked.

Point (v): Interest and penalty

64. Section 50(3) and Rule 88B(3) of the CGST Rules, so far as relevant, read:

> *"50. (3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."*
>
> *"88B. (3) In case, where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under sub-section (3) of section 50.*
>
> *Explanation.—(1) For the purposes of this sub-rule, input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. …"*

65. It was submitted on behalf of both parties that this is the correct principle. The Adjudicating Authority applied it on the appellant's own contention. It levied no interest under SGST, where the ledger balance never fell below the disputed credit. Under CGST it levied interest only on ₹1,37,934 and ₹10,228, and only from 23.07.2024, on the footing that the balance had then fallen below the credit. The credit having been found wrongly availed, and utilised to that extent, the interest of ₹1,607 is correctly computed.

66. Sub-sections (8) and (9) of Section 73 read:

> *"(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*
>
> *(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order."*

67. The appellant did not pay the tax and interest within thirty days of the show cause notice, so sub-section (8) did not relieve it of the penalty. Sub-section (9) then required a penalty of ten per cent of the tax, or ten thousand rupees, whichever is higher. It is not a penalty for fraud or

suppression, and none was alleged. The tax being sustained, the penalty of ₹84,598 (₹42,299 under each head, being ten per cent. of the tax) stands.

Finding on Point (v): The interest of ₹1,607 under Section 50(3) read with Rule 88B, and the penalty of ₹84,598 under Section 73(9), are correctly computed and are sustained.

H. SUMMARY OF CONCLUSIONS

68. We state our conclusions as follows:

(i). By Section 124 of the Finance Act, 2025 and the corresponding State amendment, clause (d) of Section 17(5) must be read, for every period from 01.07.2017, with the defined expression "plant and machinery". A building or other civil structure is excluded from that definition and cannot come within the exception in clause (d).

(ii). Even before the amendment, the Hon'ble Supreme Court in *Safari Retreats* framed the functionality test for "a mall, warehouse or any building other than a hotel or a cinema theatre". A hotel or resort building, used to supply accommodation and food, was thus kept outside that test. Such a building could not claim to be a "plant" under the unamended clause (d), and credit on goods and services received for its construction on the taxpayer's own account was blocked then as it is now.

(iii). The amendment did not alter the words "on his own account". Construction is on a taxable person's own account where the building is to serve as the setting of its own business. A hotel or resort that uses its own building to supply accommodation, food and event services constructs that building on its own account.

(iv). Clause (d) blocks only goods and services received for construction. Whether an item falls within it depends on its nature and the purpose for which it was acquired, not on how it is treated in the books of account. In terms of Section 155 of the CGST Act the burden of identifying items that fall outside clause (d) therefore lies on the appellant. The appellant has not identified any such item. It has only asked, in general terms, that its claim be verified. That request does not discharge the burden.

I. ORDER

69. In the result:

(a) The appeal is dismissed.

(b) Order-in-Appeal No. GST/AP/389/2024-25 dated 08.12.2025 and Order-in-Original No. ACCT/ADT/UDP/73/63/2024-25 dated 13.08.2024 are upheld, for the reasons recorded in this order.

(c) The demand of ₹9,32,177, comprising tax of ₹8,45,972 (CGST ₹4,22,986 and SGST ₹4,22,986), applicable interest of ₹1,607 (CGST) and penalty of ₹84,598 (CGST ₹42,299 and SGST ₹42,299), is confirmed.

(d) There shall be no order as to costs.

Pronounced in Open Tribunal on this the 30th day of September 2026.

(Prabhakaran P.M.) **(Ravi Jesuraj S.)**

Judicial Member **Technical Member (State)**