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W.P.No.14847 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.11.2025
Pronounced on	08.06.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14847 of 2025
and
W.M.P.No.16752 of 2025

RMZ Infinity (Chennai) Pvt. Ltd.,
(Now known as Chennai Business Tower
Private Limited)
Rep. by its Authorized Signatory, Shikha Sharma,
110, Mount Poonamallee Road, Porur,
Chennai - 600116.

... Petitioner

Vs.

The Joint Commissioner of CGST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No. 692, 5th Floor,
Anna Salai, Nandanam,
Chennai - 600 035.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorari, calling for Respondent Order bearing OIO.
69/2025-GST (JC) dated 4.2.2025 and quash the same along with
corresponding adjudication proceedings.



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W.P.No.14847 of 2025

For Petitioner : Mr.Vijay Narayan
Senior Counsel
Asst. by M/s. Pratyushpravasaha and
M/s.Rajshree Lohia
For M/s. Adithya Reddy

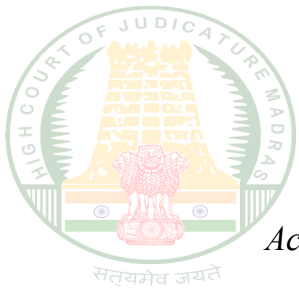
For Respondent : Mr.Rajnish Pathiyil
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned Order-in-Original No. 69/2025-GST(JC) dated 04.02.2025, whereby a part of the demand proposed in Show Cause Notice No.98/2023 dated 28.09.2023 has been confirmed. The proposals in the aforesaid Show Cause Notice read as follows:-

“11. In view of the above, M/s. RMZ Infinity (Chennai) Pvt. Ltd registered vide GSTIN-33AAACD2287R1ZA with principal place of Business located at No. 110, Mount Poonamallee Road, Porur, Chennai 600116 is hereby called upon to show cause to the Additional/Joint Commissioner of GST & Central Excise, Chennai South Commissionerate, M.H.U Complex, Anna Salai, Nandanam, Chennai-35, within 30 days of receipt of this notice, as to why:-

(i) an amount of Rs. 103,45,34,884/- (Rupees One Hundred and Three Crore Forty Five Lakhs Thirty Four Thousand Eight Hundred and Eighty Four only) (IGST – Rs.21,22,00,856/-, CGST – Rs.41,11,67,014/- and SGST – Rs.41, 11, 67,014/-) being ineligible ITC availed by the taxpayer should not be demanded from them under the provisions of sub section (1) of Section 74 of the CGST/TNGST



Act, 2017 read with Section 20 of the IGST Act, 2017;

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(ii) an amount of Rs. 62,83,59,982/- (Rupees Sixty Two Crore Eighty Three Lakhs Fifty Nine Thousand Nine Hundred and Eighty Two only) (IGST Rs.5,61,81,198/-, CGST Rs.28,60,89,392/-, SGST Rs.28,60,89,392/- being the ITC paid by the taxpayer through DRC-03 under debit entry No. D13309210473867 dated 28.09.2021 for the period from July 2017 to July 2021 should not be appropriated against the demand mentioned at sl.no. (i) above.

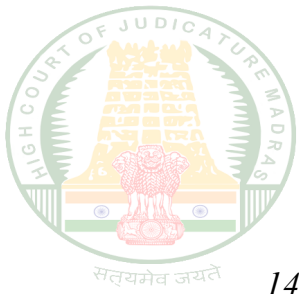
(iii) an amount of Rs.26,24,33,923/- (Rupees Twenty Six Crore Twenty Four Lakhs Thirty Three Thousand Nine Hundred and Twenty Three only) (IGST -Rs.1,10,55,237/-, CGST Rs.12,56,89,343/-, SGST Rs.12,56,89,343/- being the ITC reversed by the taxpayer in their GSTR-3B returns during the period from August 2021 to September 2022 as discussed in para 5.4 above should not be appropriated against the demand mentioned in sl.no.(i) above.

(iv) Interest should not be demanded from them on the amount demanded at Si. No. (1) above under Section 50 of the CGST/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(v) Penalty in terms of Section 74 of the CGST/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be imposed on them which is equal to the amount demanded at Sl. No (i) above;

12. M/s RICPL are hereby directed to produce all the evidence upon which they intend to rely in support of their defense. They should also indicate in their written reply, whether they wish to be heard in person before the case is adjudicated. If no mention is made in their written explanation, it would be presumed that they do not desire a personal hearing.

13. If no cause is shown against the action proposed to be taken within the stipulated time or if they do not appear before adjudicating officer when the case is posted for hearing, the case will be decided on the basis of the material evidence available on record and on merits.



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14. This notice is issued as per the provisions of Notification No. 02/2017-Central Tax dated 19.06.2017 as amended and as per the monetary limits prescribed for issuing show cause notice vide Circular No. 31/05/2018 GST (F No. 349/75/2017) 09.02.2018, as amended.

15. This show cause notice is issued without prejudice to any other action that may be initiated under any other provisions of the IGST Act, 2017/CGST Act, 2017/TNGST Act, 2017 or any other law for the time being in force in India.

16. Reliance for Issue of this notice is based on the documents (RUDs) listed in Annexure-1 to this Notice. Copy of the relied upon documents mentioned therein are enclosed and the same constitute integral part of this show cause notice.”

2. The petitioner has already reversed a sum of Rs.89,07,93,903/- under protest pursuant to the investigations carried out by the respondents. In the impugned Order-in-Original No. 69/2025-GST(JC), the respondent has stated as under:

“ 20. APPLICABILITY OF PENALTY:

20.1 Section 74(1) of the CGST Act, 2017 provides for determination of tax not paid or short paid or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts and reads as follows:

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit



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has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund erroneously been made, or who has wrongly availed or utilised input tax cred the notice along with interest payable thereon under section 50 and a per requiring him to show cause as to why he should not pay the amount specified equivalent to the tax specified in the notice.

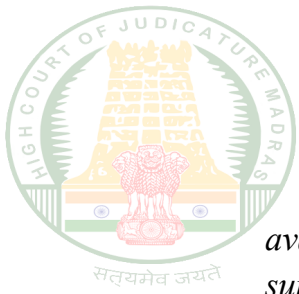
The section covers certain situations for demand and recovery of taxes in cases of fraud, or any kind of wilful mis-statement or suppression of facts with an intent to evade payment of tax.

"Fraud" is normally understood as deceit with an intent to obtain an unjust advantage

"Wilful misstatement" generally covers a case of deceit but generally with the connivance of another.

The suppression of material facts by the noticee, as outlined above, is a clear violation of the legal provisions under the CGST Act. The noticee, in this case, failed to declare the necessary information regarding the ineligible Input Tax Credit availed on works contract services and construction services in their GSTR-3B. The issue, which was discovered during an investigation, highlights the deliberate non-disclosure of facts, with the noticee opting to declare the ineligible ITC in an incorrect section of the GSTR. 3B, specifically in row A(5) of Table 4, instead of the mandated row D(1). This act was a calculated attempt to avoid scrutiny by the department, thereby suppressing the true nature of their ITC claims. This intentional misrepresentation, which escaped detection but for the intelligence gathered by the officers, is indicative of the noticee's willful suppression of facts, and establishes the 'mens rea' required to justify the invocation of Section 74(1) of the CGST Act.

20.2 The noticee's actions contravene several legal provisions under the CGST Act. Firstly, they violated Section 17(5)(c) by wrongly



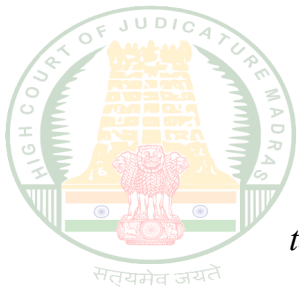
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availing ITC on works contract services, even though their outward supply is renting of immovable property service, which does not fall within the scope of eligible ITC under this section. Secondly, they contravened Section 17(5)(d) by claiming ITC for the construction of immovable property on their own account, which is explicitly prohibited under the Act. Lastly, they breached Rule 61 of the CGST Rules 2017, in conjunction with Section 39 of the CGST Act, by failing to declare the ineligible ITC in the correct section of the GSTR-3B. Instead, they improperly declared it in row A(5) of Table 4, thereby attempting to evade detection and examination by the officers. These violations, coupled with the suppression of facts, provide a strong basis for the demand issued under Section 74 of the CGST Act, 2017, and further underscore the taxpayer's non-compliance with the prescribed legal framework.

20.3 Section 74 of the CGST Act, 2017 contains the machinery provision which empowers the department to demand non/short payment of tax, irregularly availed credit or utilized Input Tax Credit along with interest and a penalty leviable under the provisions of the Act or Rules made thereunder The relevant extract of Sections 74 is reproduced below for ready reference:

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts..

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the



tax specified in the notice.

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(11) Where any person served with an order issued under subsection (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

The provisions of Section 122(2)(b) of the CGST Act, 2017, read as under:

Section 122. Penalty for certain offences.

"(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

20.4 Since the contraventions by the taxpayer have been conclusively proved in the foregoing paragraphs, I hold that the taxpayer is liable for penalty as per Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017 in respect of the issues discussed in Paras 12 above.

21. Interest

12.1 As discussed in the preceding paragraphs, after thorough perusal of the records, analysis of the statutory provisions, it has been conclusively held that the taxpayer is liable to reverse the ineligible ITC amounting to Rs.92,29,09,162/- (CGST Rs.40,28,23,949/-, SGST Rs. 40,28,23,949/- and IGST- Rs. 11,72,61,264/-) as discussed in para 12.

21.2 As per Section 50(3) of CGST Act. 2017 "where the input tax



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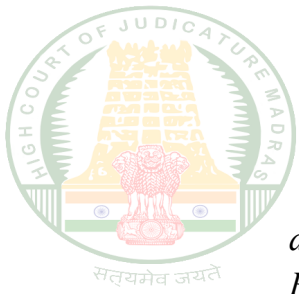
credit has been wrongly availed and utilized, the registered person shall pay interest on such input tax credit wrongly availed and utilized, at such rate not exceeding twenty four per cent may be notified by the Government on the recommendations of the Council, and the interest may be calculated in such manner as may be prescribed.

21.3 Section 50 of the Act contains provisions relating to levy of interest on delayed payment of tax and wrong availment of ITC. I find that in the issues discussed in the preceding paragraph 12, the noticee is liable to reverse irregular/ineligible ITC availed and utilized by them. Hence, the liability of interest would be automatic on the part of the noticee. In this regard, I rely upon the judgment of the Hon'ble Jharkhand High Court in the case of Mahadev Construction [2020(36)GSTL343(Jhar)]. Since the fact regarding availment and utilization of ineligible ITC is under dispute in the present case, interest is applicable and the same is required to be recovered from the noticee as per the provisions of Section 50(3) of the CGST/TNGST Act, 2017 made applicable to Integrated tax as per Section 20 of IGST Act, 2017.

21.4 In view of the above, I find that the noticee is liable to pay interest under Section 50(3) of the CGST Act, 2017, on the demand confirmed in paragraph 12.

22 In view of the above discussions and findings, I proceed to pass the following order under Section 74(9) of CGST/TNGST Act, 2017 made applicable to IGST vide Section 20 of IGST Act, 2017.

i) I confirm the demand of Rs.92,29,09,162/- (CGST Rs.40,28,23,949/-, SGST Rs. 40,28,23,949/- and IGST-Rs.11,72,61,264/-) (Rupees Ninety-Two Crores, Twenty-Nine Lakh, Nine Thousand, One Hundred and Sixty-Two Only) being ineligible ITC availed by the noticee as discussed in Para 12 above for the period from July 2017 to March 2023 under Section 74(1) read with Section 74(9) of the CGST/TNGST Act, 2017 as applicable to IGST vide section 20 of the IGST Act, 2017 and



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drop the remaining demand of Rs.11,16,25,722/- (CGST Rs.83,43,065/-, SGST Rs. 83,43,065/-and IGST-Rs.9,49,39,592/-) as proposed in SCN No.98/2023 dated 28/09/2023;

ii) I order to appropriate an amount of Rs. 62,83,59,982/- (Rupees Sixty Two Crore Eighty Three Lakhs Fifty Nine Thousand Nine Hundred and Eighty Two only) (IGST-Rs.5,61,81,198/-, CGST-Rs.28,60,89,392/-, SGST-Rs.28,60,89,392/-) being the ITC paid by the noticee through DRC-03 under debit entry No. D13309210473867 dated 28.09.2021 for the period from July 2017 to July 2021 against the demand confirmed at sl.no. (i) above;

iii) I order to appropriate an amount of Rs.26,24,33,923/- (Rupees Twenty Six Crore Twenty Four Lakhs Thirty Three Thousand Nine Hundred and Twenty Three only) (IGST-Rs.1,10,55,237/-, CGST Rs.12,56,89,343/-, SGST - Rs.12,56,89,343/-) being the ITC reversed by the taxpayer in their GSTR-3B returns during the period from august 2021 to September 2022 against the demand mentioned in sl.no.(i) above.

(v) I order to recovery of appropriate interest on the demand confirmed at Sl. No. (1) above under Section 50 read with Section 74(1) of the CGST/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017:

v) I impose a penalty of Rs.92,29,09,162/- (CGST Rs.40,28,23,949/-. SGST Rs. 40,28,23,949/- and IGST-Rs.11,72,61,264/-) (Rupees Ninety-Two Crores, Twenty-Nine Lakh, Nine Thousand, One Hundred and Sixty-Two Only) under Section 74(1) read with Section 74(9) of the CGST/TNGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act 2017 on the demand confirmed at clause (i) above.

However, If the entire tax liabilities confirmed in Clause (i) of para 22 along with interest payable under Section 50 and a penalty equivalent to fifty per cent of said tax liability (50% of penalty amount outlined



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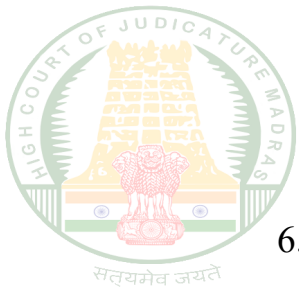
Clause (v) of para 22) is paid within thirty days of communication of this Order-In-Original, the preceding in respect of said demands shall be deemed to be concluded in terms of Section 74(11) of the CGST/TNGST Act, 2017.

3. The petitioner is engaged in the business of renting and leasing of immovable properties. The petitioner had, originally, correctly refrained from availing input tax credit in view of the restrictions under Section 17(5)(c) and Section 17(5)(d) of the CGST Act.

4. The dispute in the present case pertains to the period between July 2017 to September 2022. During which period, the petitioner has availed Input Tax Credit on the following items:

- (i) construction materials*
- (ii) capital goods used in construction activities*
- (iii) sanitary and plumbing materials*
- (iv) electrical and electronic goods which are used or installed in the buildings*
- (v) services relating to architecture landscaping, construction services / labour contracts, works contract services (including sub contract services), selling and marketing expenditure etc.*

5. The petitioner availed Input Tax Credit, in light of the decision of the Orissa High Court in ***Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST [2019 (25) GSTL 341]***, which was rendered on 17.04.2019.



6. In light of the above decision of the Orissa High Court in **Safari**

Retreats Pvt. Ltd. vs. Chief Commissioner of CGST, the petitioner submitted a representation dated 16.08.2019 and informed the respondent that the petitioner was entitled to avail the Input Tax Credit. Paragraph 4 of the said communication dated 16.08.2019 reads as under:-

*“4. In line with the above ruling, we now wish to claim the input tax credit in respect of **inputs, input services and capital goods** for the tax periods commencing **April 2018 to March 2019** and for the tax periods **April 2019 to June 2019** in our returns in Form GSTR 3B to be filed for the tax period, **June 2019**, the relevant details of GST paid by us on various inputs, input services and capital goods in the return to be filed for the month of June 2019 are as follows:-*

Period	Due date for claim	Inputs	Amount of ITC claimed Input services	Capital Goods
April 2018 to March 2019	Earlier of (i) Filing of return of Sept 2019 (ii) filing of annual return for 2018-19	3,95,84,747/-	17,85,84.125	--
April 2019 May 2019	Earlier of (i) Filing of return of Sept 2020	---	4.015	--
June 2019	(ii) filing of annual return for 2019-20	9,900	2,58,19,649	---
	Total	3,95,94,647	22,51,11,167	---

Broadly, the credits proposed to be claimed are in respect of (I) construction materials (ii) capital goods used in construction activities (iii) sanitary and plumbing materials (iv) electrical and electronic goods which are used or installed in the buildings (v) services relating to architecture landscaping, construction services / labour contracts, works contract services (including sub contract services), selling and marketing



expenditure etc. The input credit register furnishing transaction / invoice wise details of the input credits claimed is enclosed as Annexure 1 for your immediate and ready reference.

As may be noted, the total claim as indicated in the table supra is within the due date and hence rightly and wholly eligible as input credit which your goodseives with concur with. The total input credit supra is currently claimed and carried forward and unutilised credit in the said return. In the absence of any GST on outward supplies currently, the same is pending utilisation.”

7. Thus, it is evident that the petitioner wanted to avail Input Tax Credit for the above sum of Rs.22,51,11,167/-.

8. In the last paragraph of the aforesaid communication, the petitioner had sought approval from the respondents. The letter dated 16.08.2019 was addressed to the Office of the Assistant Commissioner of GST & Central Excise, 2nd Floor, No.141, Yazhini Complex, 1st Main Road, Burma Colony, Perungudi, Chennai – 600 096. Though the petitioner had sought for an approval, the record reveals that no approval was given by the respondent to the petitioner in response to the aforesaid representation / communication dated 16.08.2019.

9. As against the aforesaid approval sought for Rs.22,51,11,167/-, the petitioner appears to have ended up availing a total input tax credit of



Rs.1,03,45,34,884/-, and thereafter, made a partial reversal, as stated in the impugned order and the show cause notice that preceded the impugned order.

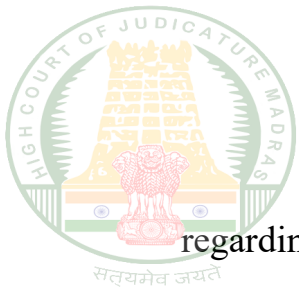
10. The total Input Tax Credit availed by the petitioner pursuant to the aforesaid letter is Rs.26,47,05,814/-. Thereafter, Input tax credit was availed for the balance period starting from July 2017 to July 2021. Thus, a sum of **Rs.1,03,45,34,884/-** was availed as detailed below:

Period	IGST	CGST	SGST	Total
July 2017 - July 2021	21,22,00,856	41,11,67,014	41,11,67,014	1,03,45,34,884

11. Subsequently, the petitioner has reversed a sum of Rs.89,07,93,903/- on 28.09.2021 for the period from July 2017 to July 2021 and for the rest of the period as detailed below:

Period	IGST	CGST	SGST	Total
July 2017 - July 2021	5,61,81,198	28,60,89,392	28,60,89,392	62,83,59,982
Aug 2021 - Sep 2022	1,10,55,237	12,56,89,343	12,56,89,343	26,24,33,923

12. The challenge to the impugned order is primarily on the ground that the petitioner, having intimated the department as early as 16.08.2019

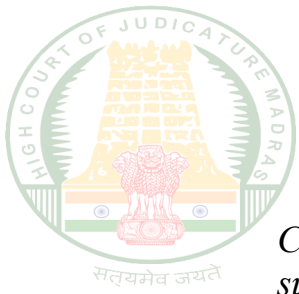


regarding the availment of the aforesaid input tax credit, the respondent was not justified in invoking Section 74 of the respective GST enactments in Show Cause Notice No.98/2023 dated 28.09.2023.

13. The learned Senior Counsel for the petitioner drew the attention to the provisions of the Central Excise Act submitted that the parameters of Sections 73, 74 and 74A of the respective GST enactments must be properly applied. He further invited attention to Instruction No.05/2023-GST dated 13.12.2023.

14. The learned Senior Counsel submitted that in paragraph 3.3 of the aforesaid instructions dated 13.12.2023, bearing reference F.No.CBIC-20004/3/2023-GST issued by the Central Board of Indirect Taxes and Customs, it was clarified that Section 74(1) of the CGST Act reads as under:

“It is evident that Section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of Section 74(1) of



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CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the Show Cause Notice.”

15. Therefore, it is submitted that there should have been objective material forming the basis of a reasonable belief for invoking Section 74 of the respective GST enactments. The learned Senior Counsel further submits that, to allege suppression, there must be a failure to disclose necessary information regarding ineligible credit.

16. On the other hand, learned Senior Standing Counsel for the respondents submits that, in this case, the petitioner had informed the department on 16.08.2019, i.e., after the decision of the Orissa High Court in ***Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST***, rendered on 17.04.2019.

17. In short, the learned Senior Counsel submits that once there was a declaration on 16.08.2016, the question of suppression of facts with any intent does not arise. The learned Senior Counsel further draws attention to the decision of the Hon'ble Supreme Court in ***Carona Ltd., vs. Parvathy Swaminathan & Sons***, reported in ***2007 8 SCC 559***, wherein the relevant



paragraph reads as under:-

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“26. The learned counsel for the appellant company submitted that the fact as to “paid-up share capital” of rupees one crore or more of a company is a “jurisdictional fact” and in absence of such fact, the Court has no jurisdiction to proceed on the basis that the Rent Act is not applicable. The learned counsel is right. The fact as to “paid-up share capital” of a company can be said to be a “preliminary” or “jurisdictional fact” and said fact would confer jurisdiction on the Court to consider the question whether the provisions of the Rent Act were applicable. The question, however, is whether in the present case, the learned counsel for the appellant tenant is right in submitting that the “jurisdictional fact” did not exist and the Rent Act was, therefore, applicable.”

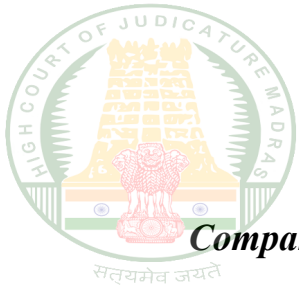
18. It is submitted that, in the absence of any foundational facts, the extension of the period of limitation under Section 73 is without jurisdiction.

19. The learned Senior Counsel also submits that the show cause notice issued for multiple tax periods would amount to covering different assessment years, which is not permissible. In this connection, the learned Senior Counsel draws attention to the following decisions:-

(i) *Titan Company Ltd. vs. Joint Commissioner of GST 7 Central*

Excise in WP.No.33164 of 2023

(ii) *Joint Commissioner of GST & Central Excise vs. Titan*



**Company Ltd. (Appeal) in W.A.Nos.2389 and 1397 of 2024 and
WEB COMP.Nos.9981 and 16925 of 2024.**

**(iii) R A and Co vs. The Additional Commissioner of Central
Taxes, South Commissionerate, reported in 2025 SCC OnLine Mad 3394**

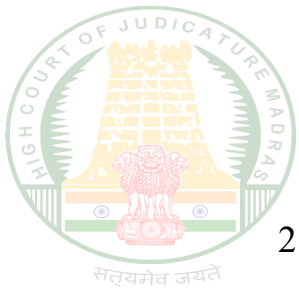
**(iv) R Ashaarajaa Partner of JRD Realtorss and Ors. Vs. The
Senior Intelligence Officer, Directorate General of GST Intelligence and
Ors in W.P.No.29716 of 2024.**

**(v) M/s Chimney Hills Education Society vs. Additional
Commissioner of central Tax and Another reported in [2024 SCC OnLine
Kar 21844]**

**(vi) Uno Minda Limited (Seating Division) vs. The joint
Commissioner of GST and Central Excise, in W.P.No.27776 of 2024 &
WMP.Nos.30287 & 30288 of 2024.**

**(vii) Tharayil Medicals vs. The Deputy Commissioner reported
in [2025 SCC OnLine Ker 2334].**

20. On the other hand, the learned Senior Standing Counsel for the respondents submits that the view earlier taken by this Court, which had been recanted, has not attained finality, as the Division Bench of this Court has granted an interim stay in W.A.No.3448 of 2025, dated 12.11.2025.



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21. The learned Senior Standing Counsel for the respondents also relies on two other decisions of the Bombay High Court and Madhya Pradesh High Court, wherein similar issues arising out of a common order for several assessment years / tax periods – where the bunching of proceedings was justified – were considered:

(i) ***Riocare India Pvt.ltd. Vs. Assistant Commissioner, CGST and C.Ex, in Writ petition No.19381 of 2024, dated 06.01.2025*** reported in ***(2025) 26 Centax 339 (Bom)***, wherein it is held as follows:-

“4. In the present case, admittedly there is no issue of limitation as contemplated under Section 74(10). In these circumstances, at least prima facie we are not satisfied that this Writ Petition ought to be entertained and which is challenging the show cause notice. The Petitioner will have to face the show cause notice and can canvass all arguments before the authority concerned, including the issues raised in the present writ petition.”

(ii) ***M/s Rahul Steels Through its Authorised Signatory Rahul Gandnhi and others vs. Union of India and Others in WP.No.8015 of 2024 dated 17.12.2024***, wherein it is held as follows:-

“10. In order to prove the circular trading as explained by way of diagram in the page 20 of the common show Cause Notice, said notice has rightly been issued and the joint assessment proceedings are liable to be undertaken under



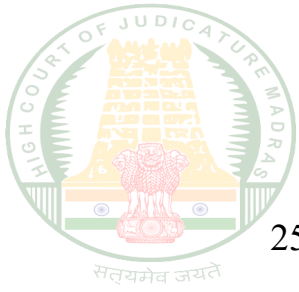
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Section 74 of the CGST Act, 2017 by the proper Officer. Hence, the petitioners cannot be singled out from this assessment proceedings by entertaining this writ petition.”

22. The learned Senior Standing Counsel submits that the decision of the Orissa High Court has been reversed by the Hon’ble Supreme Court in ***Chief Commissioner of Central Goods and Services Tax & Others vs. Safari Retreats (P) Ltd & Ors.*** reported in ***(2025) 2 SCC 523***.

23. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

24. As far as the challenge to the impugned proceedings for multiple tax periods is concerned, the issue now stands covered against the petitioner in terms of the decision of the Karnataka High Court in ***M/s Chimney Hills Education Society vs. Additional Commissioner of Central Tax and Another*** reported in ***[2024 SCC OnLine Kar 21844]***. Therefore, no further views are expressed, in view of the observations made in Paragraph 20 of the said order.



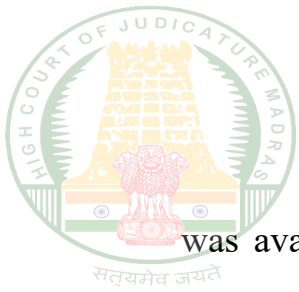
25. As far as the merits are concerned, there is no dispute that the petitioner is a company engaged in the renting of immovable properties and, in connection therewith, has built immovable property by availing the services of various works contracts.

26. Admittedly, in this case, the petitioner had not availed the Input Tax Credit within the time limit prescribed under Section 16 of the Act.

27. Availing of the Input Tax Credit is clearly contrary to the mandate to Section 17(5)(c) and (d), and therefore, the petitioner is not entitled to avail Input Tax Credit for a sum of Rs.1,03,45,34,884/-.

28. The petitioner, however, availed Input Tax Credit on inputs / input services based on the decision of the Orissa High Court in *Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST*, reported in *[2019 (25) GSTL 341]*, where, the challenge was to the validity of Section 17(5)(c) and (d) of the respective GST enactment. The said decision was rendered by the Division Bench on 17.04.2019.

29. Initially, only a part of the Input Tax Credit i.e. Rs.26,47,05,814/-

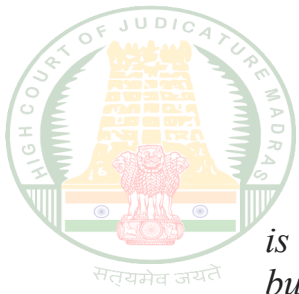


was availed pursuant to the letter dated 16.08.2019 for the period between April 2018 and June 2019, and thereafter, the entire amount was claimed belatedly. A part of the amount has subsequently been reversed as mentioned above.

30. The Orissa High Court, in its decision on 17.04.2019 in ***Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST***, ultimately held that the narrow interpretation put forward by the department insofar as Section 17(5) (d) is concerned frustrates the very object of the Act, with the following observations:

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

Therefore, the contention which has been raised by the Learned Counsel for 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



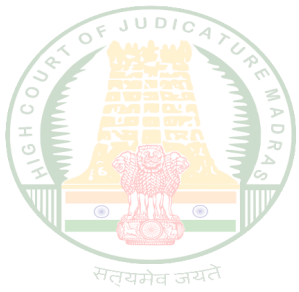
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is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.

20. In that view of the matter, in our considered opinion 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, inasmuch as keeping in mind the language used in (1999) 2 SCC 361 = 1999 (106) E.L.T. 3 (S.C.) (supra), the very purpose of the credit is to give benefit to the assessee. 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) of the CGST Act.”

31. This view was later reversed by the Hon’ble Supreme Court in **Chief Commissioner of Central Goods and Services Tax vs Safari Retreats Pvt. Ltd.**, reported in 2019 (25) G.S.T.L. 341 (Ori.). The reasoning of the Hon’ble Supreme Court is as under:

58. Essentially, the challenge to constitutional validity is that, in the present case, the provisions do not meet the test of reasonable classification, which is a part of Article 14 of the Constitution of India. To satisfy the test, there must be an intelligible differentia forming the basis of the classification, and the differentia should have a rational nexus with the object of legislation. The Union of India rightly contends that immovable property and immovable goods for the purpose of GST constitute a class by themselves. Clauses (c) and (d) of Section 17(5) apply only to this class of cases. The right of ITC is conferred only by the Statute; therefore, unless there is a statutory provision, ITC cannot be enforced. It is a creation of a statute, and thus, no one can claim ITC as a matter of right unless it is expressly provided in the statute. It cannot be disputed that the legislature can always carve out exceptions to the entitlement of ITC under Section 16 of the CGST Act.



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59. Therefore, the cases covered by clauses (c) and (d) of Section 17(5) are entirely distinct from the other cases. This appears to be done to ensure the object of not encroaching upon the State's legislative powers under Entry 49 of List II. Therefore, it is not possible to accept the submission that the difference is not intelligible and has no nexus to the object sought to be achieved. Moreover, to decide why transactions covered by clauses (c) and (d) are separately classified, the Court will have to go into complex questions involving fiscal adjustments of diverse elements. The Court has no experience or expertise to embark upon the said exercise.

60. We fail to understand the argument that the classification is underinclusive and creates discrimination. In this case, equals are not being treated as unequals. The test of vice of discrimination in taxing law is less rigorous. Ultimately, the legislature was dealing with a complex economic problem. By no stretch of the imagination, clauses (c) and (d) of Section 17(5) can be said to be discriminatory. No amount of verbose and lengthy arguments will help the assessee prove the discrimination. In the circumstances, it is not possible for us to accept the plea of clauses (c) and (d) of Section 17(5) being unconstitutional.

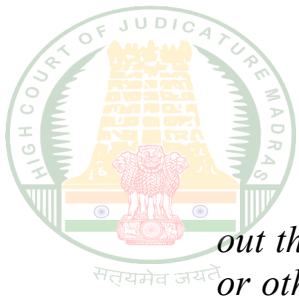
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65. Some of our conclusions can be summarised as under:

a. The challenge to the constitutional validity of clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act is not established;

b. The expression “plant or machinery” used in Section 17(5) (d) cannot be given the same meaning as the expression “plant and machinery” defined by the explanation to Section 17;

c. The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression “plant or machinery” used in Section 17(5) (d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying



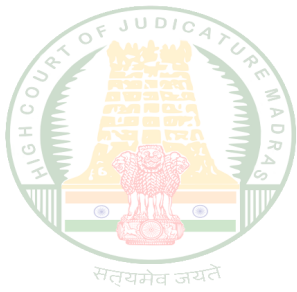
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out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a “plant” for the purposes of clause (d) of Section 17(5).

32. The review against the aforesaid order was also dismissed by the Hon'ble Supreme Court on 20.05.2025, and is reported in **2025 (30) CENTAX 350 (S.C.)**.

33. Section 17(5)(c) and (d) of the respective GST enactment contains a prohibition and prohibits a person for availing of Input Tax Credit on works contract services supplied for the construction of an immovable property, and on goods or services received by a taxable person for the construction of an immovable property on his own account, including such goods or services or both used in the course or furtherance of business.

34. For the sake of clarity, Section 17(5)(c) and (d) of the respective GST Enactments and Explanation to Section 17 which defines the expressions 'construction' and 'plant and machinery' are extracted below:



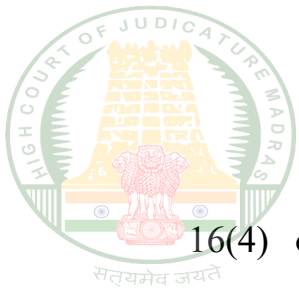
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Section 17(5)	
(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-	
Clause (c)	Clause (d)
works contract services when 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;	goods or services or both received by a taxable person for construction of an immovable property (other than plant or 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 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.	

35. The restrictions contained in the above clauses will not apply in the case of construction of “plant and machinery”. The Explanation to Section 17 explicitly defines the expressions ‘construction’ and ‘plant and machinery’.

36. The petitioner will have no occasion to utilize the Input Tax Credit for discharging the tax liability on the renting of immovable property.

37. As mentioned above, the petitioner could not have availed input tax credit, even otherwise belatedly, in view of the restrictions under Section

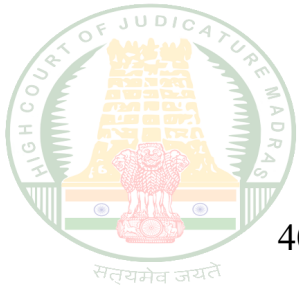


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16(4) of the respective GST enactments. The fact remains that the department had not accepted the decision and had eventually approached the Hon'ble Supreme Court in *Chief Commissioner of Central Goods and Services Tax & Others vs. Safari Retreats (P) Ltd & Ors.* [(2025) 2 SCC 523], which was rendered on 03.10.2024, and a review petition against the said order was also dismissed on 20.05.2025, as mentioned above.

38. If an approval or concurrence was given to allow the petitioner to avail the input tax credit pursuant to the request of the petitioner, invocation of machinery under Section 74 could have been legitimately questioned by the petitioner. Mere communication outside the GST regime, which was not responded to by the respondent, would not entitle the petitioner to bonafide believe that the petitioner was entitled to avail the blocked credit or that input tax credit was not on account of suppression of facts.

39. Even otherwise, the credit that was wrongly availed by the petitioner was beyond the period of limitation. Therefore, the invocation of the extended period of limitation is justified. That apart, the very basis on which the input tax credit was availed has been removed / obliterated by the Hon'ble Supreme Court by reversing the decision of the Orissa High Court.



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40. Further, the petitioner initially wanted to avail only Rs.22,51,11,167/-. However, without getting concurrence from the authority, the petitioner proceeded to avail a total block Input Credit for a sum of Rs.1,03,45,34,884/-. Therefore, it cannot be stated that no case has been made out for invoking the extended period of limitation.

41. Further, the law on the subject has been discussed in detail after considering the arguments of the learned Senior Counsel for the petitioner as well while disposing a batch of writ petitions today in **W.P.Nos.35967, 35970, 35974 and 35976 of 2024** etc. The ratio therein squarely applies to the facts of this case.

42. Therefore, this writ petition is liable to be dismissed, and accordingly, it is dismissed. However, liberty is given to the petitioner to file an appeal against the impugned order within a period of 30 days from the date of receipt of a copy of this order, if the petitioner desires so. No costs. Connected miscellaneous petition is closed.

08.06.2026

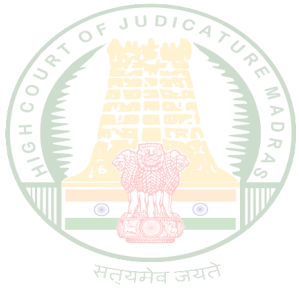
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The Joint Commissioner of CGST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No. 692, 5th Floor,
Anna Salai, Nandanam,
Chennai - 600 035.

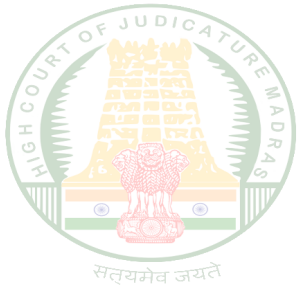


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W.P.No.14847 of 2025



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W.P.No.14847 of 2025

C.SARAVANAN, J.

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Pre-delivery Order in
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08.06.2026