

ITC ON CONSTRUCTION OF IMMOVABLE PROPERTY FOR LEASING PURPOSE- WHETHER FINANCE BILL, 2025 IS THE END OF THE ROAD?

BY: SAURABH DIXIT, ADVOCATE

The question of whether Input Tax Credit (ITC) can be claimed for inputs and input services used in the construction of immovable property—subsequently leased or rented out, and on which the appropriate GST has been paid—has been a widely debated topic. As many are aware, the Hon'ble Apex Court, in the case of *Safari Retreats P. Ltd.*, 2024 (10) TMI 286 - SUPREME COURT, ruled in favor of permitting such ITC under certain conditions.

However, to counteract the favourable judgment, the recent Union Budget 2025, under Clause 119 of the Finance Bill 2025, has proposed an amendment to Section 17(5)(d) of the CGST Act, 2017. This amendment alters the term "plant or machinery" to "plant and machinery" and applies retrospectively, effectively overriding any existing judgments, orders, or decrees of any court.

The Core Issue at Hand

The pivotal question that arises is whether, by virtue of this retrospective amendment, ITC on inputs and input services used for constructing an immovable property—whether classified as "plant or machinery" or "plant and machinery"—can still be availed.

At the outset, it is clarified that in cases where works contract services are received for constructing immovable property (excluding plant and machinery), ITC is explicitly blocked under Section 17(5)(c) of the CGST Act, 2017. Therefore, there is no scope for availing ITC on works contract services for such constructions, except for constructing plant and machinery. However, the issue that remains open for deliberation is whether ITC eligibility persists when inputs or input services (other than works contracts) are received in the course of constructing an immovable property not used by the assessee "on his own account."

Analyzing the Legal Framework

To better comprehend this matter, it is essential to examine the language of Section 17(5)(d) of the CGST Act, 2017, alongside paragraphs 32 and 44 of the Hon'ble Apex Court's judgment in *Safari Retreats*:

Section 17(5) CGST Act, 2017:

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:



(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery (now amended to read as “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 1 (renumbered as per Finance Bill, 2025): For the purposes of clauses (c) and (d), “construction” includes reconstruction, renovation, additions, alterations, or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2 (as per Finance Bill, 2025): For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary in any judgment, decree, or order of any court, tribunal, or other authority, any reference to “plant or machinery” shall always be deemed to mean “plant and machinery.”

Extracts from the Hon’ble Apex Court’s Judgment in Safari Retreats

“32. Clause (d) of Section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude from the purview of sub-section (1) of Sections 16 and 18, goods or services or both received by a taxable person to construct an immovable property on his own account. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a “plant or machinery”. The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person’s “own account” when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person’s “own account” if it is intended to be sold or given on lease or license.

44. The explanation to Section 17 defines “plant and machinery”. The explanation seeks to define the expression “plant and machinery” used in Chapter V and Chapter VI. In Chapter VI, the expression “plant and machinery” appears in several places, but the expression “plant or machinery” is found only in Section 17(5)(d). If the legislature intended to give the expression “plant or machinery” the same meaning as “plant and machinery” as defined in the explanation, the legislature would not have specifically used the expression “plant or machinery” in Section 17(5)(d). The legislature has made



this distinction consciously. Therefore, the expression “plant and machinery” and “plant or machinery” cannot be given the same meaning. It may also be noted here that the expression ‘plant or machinery’ is used in dealing with a peculiar case of goods or services being received by a taxable person for the construction of an immovable property on his own account, even when such goods or services or both are used in the course of furtherance of business. Therefore, if the expression “plant or machinery” is given the same meaning as the expression “plant and machinery” as per the definition contained in the explanation to Section 17, we will be doing violence to the words used in the statute. While interpreting taxing statutes, it is not a function of the Court to supply the deficiencies.”

Implications of the Proposed Amendment

The Hon’ble Apex Court, in its reasoning, established that Section 17(5)(d) is an exception to the general rule allowing ITC. While it blocks ITC for inputs and input services used in constructing immovable property, two exceptions exist in which case ITC can still be claimed even if the construction is of immovable property:

1. **Construction of “plant or machinery”** – The judgment carefully differentiated "plant or machinery" from "plant and machinery." The Finance Bill, 2025, however, nullifies this distinction by retrospectively amending the term to "plant and machinery," thereby extending the ITC prohibition to all related inputs and input services.
2. **Construction of immovable property not for “own account”** – Strikingly, the Finance Bill, 2025, does not amend this second exception. As per the Hon’ble Apex Court’s ruling in paragraph 32, if an immovable property is not constructed for the taxable person’s "own account" (i.e., it is meant for leasing or licensing), ITC should still be available.

The Way Forward

Given that the Finance Bill, 2025, fails to define "own account" or remove the exception related to leased properties, the ITC claim for immovable properties intended for lease should still be legally tenable. In other words, if an assessee constructs an immovable property using inputs and input services (excluding works contract) and subsequently leases it, the ITC claim should not be treated as blocked under Section 17(5)(d) of the CGST Act, 2017.

This omission in the amendment creates a potential legal gray area. While the legislature has attempted to neutralize the first exception, the second exception remains untouched, leaving room for continued litigation and potential retrospective amendments in the future.



Conclusion

The Finance Bill, 2025, through its retrospective amendment, attempts to override the judicial interpretation provided in *Safari Retreats*. However, it stops short of addressing all nuances of the judgment, particularly regarding properties constructed for leasing purposes. In the absence of a clear legislative definition of "own account," businesses leasing out immovable properties may still have a strong case for ITC claims under the existing legal framework.

The views expressed herein are based on the author's personal understanding and should not be construed as a formal legal opinion. The matter remains open to further judicial scrutiny and possible legislative intervention.



SaurabhDixit
Advocate