Delhi HC extends Section 14 Limitation benefit for claiming construction ITC of past period post Safari Retreats

The Hon'ble Delhi High Court in ***Riveria Commercial Developers Limited v. Union of India & Ors. [W.P.(C) 11633/2019 and W.P.(C) 4683/2020 dated August 10, 2026]*** disposed of a batch of writ petitions challenging the constitutional validity of clauses (c) and (d) of Section 17(5) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), thereby granting liberty to the Assessees to file appropriate applications before the Adjudicating Authority for availing Input Tax Credit (**"ITC"**) pertaining to the past period, notwithstanding the limitation prescribed under Section 16(4) of the CGST Act, and held that the delay occasioned in pursuing such bona fide proceedings before the Court would stand excluded in terms of Section 14 of the Limitation Act, 1963.

Facts:

M/s Riveria Commercial Developers Limited and M/s Delhi International Airport Ltd ("**the Petitioners"**) filed writ petitions before the Hon'ble Delhi High Court, seeking to strike down clauses (c) and (d) of Section 17(5) of the CGST Act (**"the Impugned Provisions"**), which restrict availment of ITC on works contract services and on goods or services received for the construction of an immovable property. The Petitioner in W.P.(C) 4683/2020 raised an additional challenge to the validity of Circular No. 28 (Flyer No.) dated January 01, 2018 (**"the Impugned Circular"**).

During the pendency of the petitions, the Hon'ble Supreme Court in ***Chief Commissioner of Central Goods and Service Tax v. M/s Safari Retreats Private Ltd. [2024 INSC 756 dated October 03, 2024]*** (**"Safari Retreats"**) upheld the constitutional validity of the Impugned Provisions. However, while emphasizing upon the applicability of the functionality test, the Hon'ble Supreme Court observed that whether or not a proposed structure is a "plant" would require appreciation of facts and shall differ on a case-to-case basis. It was further clarified therein that immovable properties constructed for leasing or renting purposes are not covered within the phrase “on his own account” and, therefore, the restriction under Section 17(5)(d) of the CGST Act does not apply to such activities.

The Petitioners contended that the retrospective amendment carried out by the Government in Section 17(5)(d) of the CGST Act does not affect certain observations made by the Hon’ble Supreme Court in *Safari Retreats*, and accordingly, sought directions for allowing them to avail the ITC for the past period along with consequential benefits, notwithstanding the restriction contained under Section 16(4) of the CGST Act.

It was further submitted that, on account of the delay occasioned in pursuing the present proceedings before the Court, the Petitioners would not be permitted to claim the benefits otherwise available to them.

Issues:

- Whether the Assessees are entitled to seek exclusion of the time spent in pursuing bona fide writ proceedings, for availing ITC pertaining to the past period, notwithstanding the limitation prescribed under Section 16(4) of the CGST Act?
- Whether the Impugned Circular, issued prior to the judgment of the Hon’ble Supreme Court in *Safari Retreats*, is required to be read in accordance therewith?

Held:

The Hon’ble Delhi High Court in ***W.P.(C) 11633/2019 and W.P.(C) 4683/2020*** held as under:

- Observed that, the challenge to the constitutional validity of the Impugned Provisions has already been put to quietus by the Hon’ble Supreme Court in *Safari Retreats*, wherein the Impugned Provisions were held to be constitutionally valid. However, the Hon’ble Supreme Court, while emphasizing upon the applicability of the functionality test, observed that whether or not the proposed structure is a plant, would require appreciation of facts and shall differ on a case-to-case basis.

- Noted that, Section 14 of the Limitation Act, 1963, *inter alia*, provides for the exclusion of the time spent in prosecuting bona fide proceedings before a Court.

- Held that, the Petitioner, if so advised, will be at liberty to file an appropriate application before the Adjudicating Authority, which will be considered pragmatically in accordance with law, thereby permitting the Petitioner to seek exclusion of the period spent in pursuing the bona fide proceedings while seeking consequential ITC relief.

- Further, held that, the Impugned Circular, having been issued prior to the judgment of the Hon'ble Supreme Court in *Safari Retreats*, has to be read in accordance therewith. However, such an exercise can only be carried out by the Adjudicating Authority upon appreciating the facts and circumstances of the case. Pertinently, the Revenue did not dispute that the judgment of the Hon'ble Supreme Court is to be applied and the Impugned Circular has to be read accordingly.

- Accordingly, disposed of both the writ petitions along with pending applications, leaving the Petitioners at liberty to pursue their claims before the Adjudicating Authority in accordance with law.

Our Comments:

Section 17(5)(c) of the CGST Act blocks ITC in respect of works contract services when supplied for the construction of an immovable property (other than **"plant and machinery"**), except where it is an input service for further supply of works contract service. Section 17(5)(d) of the CGST Act, as it stood at the relevant time, blocked ITC on goods or services or both received by a taxable person for the 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. The Explanation to Section 17 of the CGST Act defines “plant and machinery” to mean apparatus, equipment and machinery fixed to earth by foundation or structural support used for making outward supplies, but specifically excludes land, building or any other civil structures. Further, Section 16(4) of the CGST Act prescribes the outer time limit for availment of ITC, i.e., the thirtieth day of November following the end of the financial year to which the invoice or debit note pertains, or the furnishing of the relevant annual return, whichever is earlier.

The Hon’ble Supreme Court in *Safari Retreats* (supra), while upholding the constitutional validity of Section 17(5)(c), Section 17(5)(d) and Section 16(4) of the CGST Act, had categorically held that the expression “plant or machinery” used in Section 17(5)(d) of the CGST Act cannot be given the same meaning as the expression “plant and machinery” defined in the Explanation to Section 17 of the CGST Act, and that the word “plant” therein has to be interpreted by applying the functionality test. It was held that if the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a “plant”, and ITC could be availed against the outward supply of renting or leasing services, subject to fulfilment of other conditions. However, whether a mall, warehouse or any building (other than a hotel or a cinema theatre) qualifies as a “plant” is a factual question to be decided in each case.

Thereafter, with the intent to neutralize the interpretation rendered in *Safari Retreats* (supra), the Government, pursuant to the recommendations of the 55th GST Council Meeting, vide Section 124 of the Finance Act, 2025, retrospectively substituted the expression “plant or machinery” with “plant and machinery” in Section 17(5)(d) of the CGST Act, w.e.f. July 01, 2017, notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal or other authority. Pertinently, in the present case, the Petitioners contended, and the Hon’ble Delhi High Court took note of the contention, that certain observations made by the Hon’ble Supreme Court in *Safari Retreats* (supra) continue to operate notwithstanding the said retrospective amendment, thereby keeping the doors open for the taxpayers to agitate their claims on facts before the Adjudicating Authority.

The present decision assumes significance as it is one of the first decisions following the disposal of *Safari Retreats* (supra) by the Hon'ble Supreme Court, wherein the High Court has extended the benefit of Section 14 of the Limitation Act, 1963 to ITC claims of the past period, by permitting exclusion of the time spent in prosecuting bona fide writ proceedings while computing limitation. In this regard, reliance can be placed on the judgment of the Hon'ble Supreme Court in ***M.P. Steel Corporation v. Commissioner of Central Excise [(2015) 7 SCC 58 dated April 24, 2015]***, wherein it was held that even though the Limitation Act may not apply *proprio vigore* to proceedings before quasi-judicial authorities, the principles underlying Section 14 thereof would apply to exclude the time spent in bona fide prosecuting proceedings before a wrong forum. Similarly, in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department [(2008) 7 SCC 169 dated April 16, 2008]***, the Hon'ble Supreme Court held that Section 14 of the Limitation Act, 1963 should be liberally construed so as to advance the cause of justice.

Accordingly, developers, lessors and other taxpayers whose ITC claims on construction of immovable properties intended for leasing or renting were kept in abeyance or remained embroiled in litigation pending the outcome of *Safari Retreats* (supra), may evaluate filing appropriate applications before their jurisdictional Adjudicating Authorities, seeking consequential ITC relief for the past period by claiming exclusion of the time spent in pursuing bona fide proceedings, in terms of Section 14 of the Limitation Act, 1963. However, such claims would remain subject to satisfaction of the functionality test on facts and the outcome of the pending challenges surrounding the retrospective amendment to Section 17(5)(d) of the CGST Act.

CLICK HERE FOR OFFICIAL JUDGMENT COPY

(Author can be reached at info@a2ztaxcorp.com)

A2Z Taxcorp LLP

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091
Email: info@a2ztaxcorp.com; Web: www.a2ztaxcorp.net; Tel: +91 11 4242 7056