

A2Z Taxcorp LLP

Resort Building Is Not a Plant and ITC on Its Construction on 'Own Account' Blocked under Section 17(5)(d) of the CGST Act

The GSTAT, Bengaluru Bench in *M/s Flora Kingdom Farm Resort v. Commissioner of Commercial Taxes* [APL/05/BUR/2026 dated September 30, 2026] dismissed the appeal of the Assessee and sustained the demand of tax, interest and penalty on Input Tax Credit (“ITC”) availed on goods and services used for construction of a resort, and held that a resort building cannot be “plant and machinery” for any period from July 01, 2017, that the functionality test laid down in *Safari Retreats* was never available to a hotel or resort building, and that a building which serves as the setting of the taxpayer’s own business is constructed “on his own account”.

Facts:

M/s Flora Kingdom Farm Resort (“**the Appellant**”), a partnership firm, runs a resort at Udupi, Karnataka, supplying room accommodation, restaurant and catering services, and hosting weddings, events and photo shoots.

Pursuant to an inspection, a Show Cause Notice dated May 20, 2024 was issued under Section 73(1) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) proposing to deny ITC of ₹9,93,894 availed during FY 2019-20 on goods and services procured for construction of the resort, as blocked under Section 17(5)(d) of the CGST Act.

The Adjudicating Authority, vide Order-in-Original dated August 13, 2024, allowed ITC of ₹1,47,922.92 on the invoices identified by the Appellant as not relating to the building (electrical equipment, air-conditioners and items expensed off) and confirmed tax of ₹8,45,972, interest of ₹1,607 and penalty of ₹84,598. The First Appellate Authority, vide Order-in-Appeal dated December 08, 2025 (“**the Impugned Order**”), upheld the demand on the plain words of Section 17(5), without dealing with the judgment of the Hon’ble Supreme Court in *Safari Retreats* or the retrospective amendment to clause (d).

A2Z Taxcorp LLP

The Appellant contended that the resort is the very apparatus of its trade and therefore a “plant” on the functionality test; that a building constructed for making taxable supplies is not constructed “on his own account”; that the orders below were unreasoned; that the Revenue must establish, invoice by invoice, that each item went into construction; and that the balance credit on movable assets, machinery, furniture and fixtures be allowed “subject to verification”.

The Revenue contended that Section 124 of the Finance Act, 2025 substituted “plant and machinery” for “plant or machinery” in Section 17(5)(d) with effect from July 01, 2017; that the definition of “plant and machinery” excludes land, building and civil structures; that even in *Safari Retreats* the functionality question was framed for buildings other than a hotel or a cinema theatre; and that the balance credit related to cement, steel, bricks, tiles, sand and sanitary items built into the structure.

Aggrieved by the Impugned Order, the Appellant filed an appeal under Section 112 of the CGST Act before the GSTAT.

Issue:

Whether ITC on goods and services used for construction of a resort building, used by the taxpayer for supplying accommodation, restaurant and event services, is blocked under Section 17(5)(d) of the CGST Act?

Held:

The GSTAT, Bengaluru Bench in **APL/05/BUR/2026** held as under:

- Observed that, the First Appellate Authority ought to have referred to *Safari Retreats* when it was cited. However, since all the contentions were fully argued before the Tribunal, being the final fact-finding forum, the reasons were supplied by the Tribunal

A2Z Taxcorp LLP

itself under Section 113(1) of the CGST Act and no prejudice was caused to the Appellant.

- Noted that, by virtue of Section 124 of the Finance Act, 2025 read with Notification No. 16/2025-Central Tax dated September 17, 2025, and the corresponding State amendment, Section 17(5)(d) must be read, for every period from July 01, 2017, with the defined expression “plant and machinery”. Explanation 1 to Section 17 expressly excludes “land, building or any other civil structures”. Hence, a resort building, however central to the business, cannot fall within the exception.
- Noted that, even under the unamended clause, 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”, having noted ***CIT v. Anand Theatres [(2000) 5 SCC 393]***. A resort supplying accommodation and food is, in substance, a hotel building, and the functionality test was therefore not available to it.
- Opined that, the distinction for “on his own account” is not between business use and personal use, but 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. If use in business were enough to take a building outside the clause, the words “including when such goods or services or both are used in the course or furtherance of business” would have no work to do. The 2025 amendment did not alter the words “on his own account”.
- Observed that, the Appellant itself admitted that the resort was constructed for use in its own business. No lease deed, licence agreement or invoice for renting of immovable property was produced to show that any part of the resort was built for letting to others. Hosting weddings, events and photo shoots with its own staff and facilities is the Appellant’s own supply of service.

A2Z Taxcorp LLP

- Held that, Section 17(5)(d) is not a blanket bar on every purchase made by the owner of a resort. Two questions arise for every item, namely, whether it was received for construction of the building or other civil structure, and if so, whether the resulting property is “plant and machinery” as defined. The treatment in the books of account is relevant but not decisive.
- Held that, under Section 155 of the CGST Act, the burden of proving eligibility to ITC and of identifying items falling outside the blocked category lies on the Appellant. All the invoices identified by the Appellant were already allowed. A general request for verification, without naming a single further invoice, supplier or category, does not discharge the burden.
- Held that, the interest of ₹1,607 computed under Section 50(3) read with Rule 88B of the Central Goods and Services Tax Rules, 2017 (“**the CGST Rules**”) only on the credit actually utilised, and the penalty of ten per cent. under Section 73(9) of the CGST Act, are sustained. Hence, the appeal is dismissed and the demand of ₹9,32,177 is confirmed.

Our Comments:

Section 17(5)(d) of the CGST Act blocks ITC on “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 1 to Section 17 defines “plant and machinery” as apparatus, equipment and machinery fixed to earth by foundation or structural support used for making outward supply, and specifically excludes land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises.

The Hon'ble Supreme Court in **Chief Commissioner of Central Goods and Service Tax v. Safari Retreats (P.) Ltd. [2024 INSC 756 dated October 03, 2024]** upheld the constitutional validity of

A2Z Taxcorp LLP

Section 17(5)(c) and (d), but held that the expression “plant or machinery” used in clause (d) was distinct from the defined expression “plant and machinery”, and that whether a building such as a mall or warehouse qualifies as a “plant” is a question of fact to be decided on the functionality test. The Hon’ble Supreme Court further explained that construction is not “on his own account” where the building is intended to be sold, leased or licensed. The review petition filed by the Revenue against the said judgment was dismissed by the Hon’ble Supreme Court vide order dated May 20, 2025.

To neutralise this ruling, on the recommendation of the 55th GST Council Meeting, Section 124 of the Finance Act, 2025 substituted “plant and machinery” for “plant or machinery” retrospectively with effect from July 01, 2017 and inserted Explanation 2, which applies notwithstanding any judgment, decree or order to the contrary. The present ruling is among the first decisions of the GSTAT applying the amended provision, and it makes the position clear that the first limb of *Safari Retreats* (building as a “plant”) no longer survives for any period, whereas the second limb (“**on his own account**”) continues to hold the field.

Para 32. of the Ruling:

“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,

A2Z Taxcorp LLP

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."

On the "plant" limb, the Tribunal has drawn support from **CIT v. Anand Theatres [(2000) 5 SCC 393]**, wherein the Hon'ble Supreme Court held that a building used for running a hotel or cinema business is not a plant but only the premises in which the business is carried on. The reliance of the Appellant on **CIT v. Taj Mahal Hotel [(1971) 3 SCC 550]** was distinguished, as that case concerned sanitary and pipeline fittings and not the hotel building itself. The Tribunal also reiterated, following **Jayam & Co. v. Assistant Commissioner [(2016) 15 SCC 125]**, that ITC is a statutory concession available only on the conditions prescribed.

On the other hand, taxpayers constructing buildings meant to be leased or licensed, such as malls, commercial complexes and warehouses, may still rely on *Safari Retreats* to contend that the construction is not "on his own account", since the amendment has left those words untouched. Likewise, the Hon'ble Delhi High Court in **Bharti Airtel Ltd. v. Commissioner, CGST Appeals-1, Delhi [W.P.(C) 13211/2024 dated December 12, 2024]** held that telecommunication towers are movable in nature and ITC thereon is not hit by Section 17(5)(d), and the Hon'ble Tripura High Court in **SR Constructions v. Union of India [W.P.(C) No. 399 of 2022 dated April 04, 2023]** allowed ITC to a works contractor constructing a hotel for its owner, as the restriction applies to the owner building for itself and not to the contractor supplying works contract service.

The ruling carries the following practical takeaways for the hospitality sector and other businesses that construct premises for self-use:

- ITC on cement, steel, bricks, tiles, civil work and other inputs going into the building and civil structures of a hotel, resort, banquet or convention facility is blocked for all periods from July 01, 2017.

A2Z Taxcorp LLP

- ITC on furniture, air-conditioners, generators, electrical equipment and other movable assets is not hit by Section 17(5)(d), but the taxpayer must maintain and produce an invoice-wise segregation at the adjudication stage itself. A prayer for “verification” at the appellate stage will not be entertained in view of Section 155.
- Where a distinct portion of the property is genuinely leased or licensed to third parties, the taxpayer should keep lease or licence agreements, renting invoices and an attribution of credit to that portion ready, to bring that part outside the expression “on his own account”.
- Interest on wrongly availed ITC is payable only to the extent the balance in the electronic credit ledger falls below the disputed credit, in terms of Section 50(3) read with Rule 88B of the CGST Rules, and this plea should be specifically taken with ledger workings.

It may also be noted that the Tribunal did not examine the constitutional validity of the retrospective amendment, observing that a tribunal created by statute cannot sit in judgment over the law it administers. Further, the finding that hotels and resorts were excluded from the functionality test even before the amendment rests on the manner in which the Hon'ble Supreme Court framed the question for remand and remains open to be tested before the Hon'ble High Court in appeal under Section 117 of the CGST Act. Any challenge to the retrospective operation of the amendment will lie only before the Constitutional Courts.

[CLICK HERE FOR OFFICIAL JUDGMENT COPY](#)

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

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm.

A2Z Taxcorp LLP

Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.

