

Chief Commissioner of Central Goods and Service Tax & Ors. v. M/s Safari Retreats Private Ltd. & Ors.

Case number: Civil Appeal Nos. 2948 and 2949 of 2023 with Writ Petition (Civil) Nos. 804, 1030 and 1036 of 2022 and Nos. 90, 846 and 847 of 2023

Citation: 2024 INSC 756 **Decision date:** 2024-10-03

GST construction ITC, constitutional validity and the historical plant test; materially affected by retrospective 2025 legislation

Court: Supreme Court

Bench: Abhay S. Oka and Sanjay Karol, JJ.

Decision stage: Final common judgment; limited factual remand in the appeals

Important qualifications

Title: Historical holding materially affected by retrospective legislation

Text: LATER STATUTORY CHANGE: This is a historical note on the 3 October 2024 judgment. Finance Act 2025, section 124, replaced "plant or machinery" in CGST Act section 17(5)(d) with "plant and machinery", deemed substituted from 1 July 2017. It also inserted Explanation 2 directing that construction notwithstanding contrary judgments, decrees or orders. Notification No. 16/2025-Central Tax dated 17 September 2025 brought section 124 into force on 1 October 2025. The defined expression excludes land, buildings and other civil structures. Accordingly, the 2024 building-as-plant functionality route must not be presented as an unchanged basis for current ITC entitlement. The dismissal of the Revenue's review petition on 20 May 2025 did not adjudicate the validity or effect of this amendment.

Verification scope: Bounded verification: the complete 2024 judgment, the official 20 May 2025 review order, enacted section 124 on the Income Tax Department website, and the GST Council's September 2025 commencement account were checked on 12 October 2026. The notification's commencement was independently corroborated in the downloaded official GST Council newsletter. This is not a comprehensive later-treatment search, a certificate that the amendment is free from challenge or stay, or verification of the Orissa remand outcome.

01 Facts

Safari Retreats constructed a shopping mall to let units to tenants. It said that GST on construction materials, equipment and professional and other services had accumulated to more than Rs. 34 crore, and sought to use that ITC against GST on rental income. This was the taxpayer's asserted credit, not an amount awarded by the Supreme Court. The taxpayer challenged denial under section 17(5)(d), contending that the provision did not cover construction for letting and alternatively that it violated Articles 14 and 19(1)(g). On 17 April 2019, the Orissa High Court read down section 17(5)(d) and held that the taxpayer paying GST on mall rentals was entitled to construction-related ITC. The Revenue appealed. Connected original writ petitions challenged sections 17(5)(c) and (d), and in some matters section 16(4), involving construction of factory premises, buildings and other commercial property used for taxable activities. The Supreme Court framed three principal questions: whether the definition of "plant and machinery" governed the then-used

phrase "plant or machinery"; what "plant" meant if it did not; and whether the challenged restrictions were unconstitutional.

Pinpoint: Paragraphs 1-5 and 24; official PDF pages 1-5 and 31-32.

02 Court Discussion

The Court began with the statutory character of ITC. Section 16 confers credit subject to conditions; section 17(5) expressly overrides sections 16(1) and 18(1) for blocked categories. Clause (c) concerns construction-related works-contract services, subject to its exceptions for defined plant and machinery and further supply of works-contract services. Clause (d), as then worded, concerned goods or services received for construction of immovable property on the taxable person's own account, with a separate plant-or-machinery exception. The Court treated these clauses as operating in materially different fields. In paragraph 32 it described own-account construction as personal use or a setting for the constructor's business, and distinguished property intended for sale, lease or licence. That discussion must be read with the judgment's actual fact-specific directions: it did not award construction credit merely because rent was taxable. Applying the text then before it, the Court refused the Revenue's invitation to read "or" as "and". It treated the different language as deliberate and held that the statutory definition of "plant and machinery", which excluded buildings and civil structures, could not be imported into the distinct phrase in clause (d). The undefined word plant therefore took its commercial meaning. Examining Taj Mahal Hotel, Anand Theatres, Karnataka Power Corporation and Victory Aqua Farm, the Court held that the broader language in Anand Theatres had been confined by the larger Bench decision in Karnataka Power Corporation to hotels and cinema theatres. A mall, warehouse or other building outside those categories could qualify as plant on the facts, applying the functionality test and considering the taxpayer's business, the building's role and its essentiality to the taxable service activity. Each building required its own inquiry. Even a qualifying plant remained subject to the other CGST Act and Rules conditions; the Court also explained section 16(3)'s restriction against taking ITC on a tax component on which depreciation had been claimed. On constitutionality, it accorded latitude to fiscal classifications, recognised immovable property as a distinct class, and held that the assessee had not established unconstitutional discrimination in clauses (c) and (d). The asserted Articles 19(1)(g) and 300A violations were not elaborated. The challenge to section 16(4) likewise did not demonstrate arbitrariness or discrimination. Since the provisions were valid and their plain interpretation was not ambiguous, reading down was unwarranted. This describes the 2024 reasoning, which must now be read with the prominent statutory-change warning above.

Pinpoint: Paragraphs 25, 27-35 and 41-65; official PDF pages 32-34, 36-51 and 57-91. Own account: paragraph 32, pages 49-50. Historical text distinction: paragraphs 42-46, pages 58-61. Functionality and limits: paragraphs 48-56 and 65(c), pages 62-75 and 90-91. Constitutional holdings: paragraphs 57-65(a), pages 75-90.

03 Decision

The constitutional challenges to section 17(5)(c), section 17(5)(d) and section 16(4) failed. The Court rejected the High Court's reading-down approach, set aside the impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023, and partly allowed those appeals. The underlying writ proceedings were remanded to the Orissa High Court for the limited purpose of determining whether the particular shopping mall was a plant under section 17(5)(d) on the functionality approach stated in the judgment. For the connected original writ petitioners, the Supreme Court expressly declined a final factual adjudication of whether their properties were plants; they could adopt or raise the issue in appropriate fact-adjudicating proceedings. Those writ petitions were rejected subject to the Court's interpretation of clause (d). There was no blanket declaration that malls or rented buildings qualified, no final allowance of Safari's claimed credit and no

refund direction. Subsequently, on 20 May 2025, the same Bench waived registry defects, condoned delay and dismissed the Revenue's review petition, Diary No. 1188 of 2025 in Civil Appeal No. 2948 of 2023, finding no error apparent on the record. That short order did not decide the subsequent statutory amendment's validity or effect.

Pinpoint: Paragraphs 56 and 63-68; official PDF pages 75 and 88-91. Review Petition (Civil) Diary No. 1188/2025: signed order dated 20 May 2025, page 1; record of proceedings, page 2.

04 In Favour Of

Mixed: Revenue on constitutional validity and setting aside the High Court judgment; taxpayers on historical interpretation and a limited factual opportunity, without a final ITC award

Mixed, with limited remand relief. The Revenue succeeded in defending the challenged provisions and overturning the High Court's reading-down judgment. The taxpayers obtained a favourable interpretation of the then-existing plant-or-machinery wording and an opportunity for a factual claim, not an adjudicated entitlement to construction ITC. The main appeals were partly allowed; the connected original writ petitions were rejected with liberty to pursue the factual issue in appropriate proceedings. The later review dismissal and retrospective legislative change must be kept distinct from that historical outcome.

Pinpoint: Paragraphs 65-68; official PDF pages 90-91. Review order dated 20 May 2025, pages 1-2. Later legislation is separately identified below.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: Start any present-day construction-credit assessment with the amended statute and applicable judicial orders, not with a headline that Safari allowed ITC for all leased property. The original judgment itself left plant status for factual determination, preserved other eligibility conditions and upheld the blocked-credit provisions. The 2025 replacement directly changes the wording on which its broad plant analysis depended, with deemed operation from the beginning of GST. Distinguish a building or civil structure from separately identifiable apparatus, equipment, machinery and qualifying foundations or structural supports; a functional connection with business alone should not be assumed to resolve the statutory definition and exclusions. Review the actual supply, contractual chain, asset classification, capitalisation, invoices, claim period, use and section 16 conditions, including the prohibition on duplicate benefit for the same tax component. Paragraph 32's own-account discussion is important historical reasoning, but its current interaction with the amendment and any later judgments needs a separate, fact-specific legal assessment. Preserve records of credits taken, reversals, assessments and pending proceedings before deciding any litigation or compliance step. Neither the remand nor the review dismissal establishes an automatic credit or refund claim. No conclusion is offered here on the constitutional validity of the 2025 amendment, whether any case-specific stay or protection exists, or how the remanded Orissa proceedings concluded.

Pinpoint: AKHB analysis drawing on paragraphs 28, 30-35, 52-56 and 63-68; official PDF pages 42-51, 73-75 and 88-91; Finance Act 2025 section 124 and the identified commencement materials.

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: sections 2(119), 7, 9, 16(1), 16(3), 16(4), 17(5)(c) and (d), the explanation defining plant and machinery, and 18(1), as considered in the 2024 judgment

CGST Act: Schedule II paragraphs 2 and 5; Schedule III paragraph 5

Constitution of India: Articles 14, 19(1)(g), 300A and Seventh Schedule List II Entry 49

Later development: Finance Act 2025, section 124; Notification No. 16/2025-Central Tax dated 17 September 2025

Statutory note

LATER STATUTORY CHANGE: This is a historical note on the 3 October 2024 judgment. Finance Act 2025, section 124, replaced "plant or machinery" in CGST Act section 17(5)(d) with "plant and machinery", deemed substituted from 1 July 2017. It also inserted Explanation 2 directing that construction notwithstanding contrary judgments, decrees or orders. Notification No. 16/2025-Central Tax dated 17 September 2025 brought section 124 into force on 1 October 2025. The defined expression excludes land, buildings and other civil structures. Accordingly, the 2024 building-as-plant functionality route must not be presented as an unchanged basis for current ITC entitlement. The dismissal of the Revenue's review petition on 20 May 2025 did not adjudicate the validity or effect of this amendment.

Treatment note

Bounded verification: the complete 2024 judgment, the official 20 May 2025 review order, enacted section 124 on the Income Tax Department website, and the GST Council's September 2025 commencement account were checked on 12 October 2026. The notification's commencement was independently corroborated in the downloaded official GST Council newsletter. This is not a comprehensive later-treatment search, a certificate that the amendment is free from challenge or stay, or verification of the Orissa remand outcome. This AI-assisted source-based AKHB research note is not evidence of human legal review and is not a substitute for professional advice on the reader's facts.

Scope of source review

Complete 91-page official judgment, paragraphs 1-68, read including parties' submissions, quoted statutory text, cited-case discussion, constitutional reasoning and operative directions. Cover and signature page visually checked. The connected W.P. (C) No. 1036 is shown as 2022 on the cover but 2023 in paragraph 5(e); the cover year is used in the metadata. The 2024 holding is historical and must be displayed with the 2025 statutory-change warning.

Primary source

Source description: Supreme Court of India official signed judgment dated 3 October 2024

Official source: [Open source document](#)

AKHB source PDF: [Open source document](#)

Judges: Abhay S. Oka; Sanjay Karol

Outcome kind: remand

Additional sources

Entry 1

Source: Finance Act 2025, section 124: enacted amendment, official Income Tax Department text

Source document: [Open source document](#)

Pinpoint: Section 124(i)-(ii), including inserted Explanation 2; page identifies Finance Acts, 2025, Chapter IV - Indirect Taxes.

Checked on: 2026-10-12

Verification scope: Full section read on the official departmental webpage and saved locally. This is the enacted section 124, not Finance Bill clause 119.

Entry 2

Source: Notification No. 16/2025-Central Tax dated 17 September 2025, S.O. 4206(E)

Source document: [Open source document](#)

Pinpoint: Gazette of India, Extraordinary, Part II, section 3(ii), page 4: sections 122-124 among provisions commencing 1 October 2025.

Checked on: 2026-10-12

Verification scope: Official indexed notification text checked; commencement independently corroborated in the downloaded official GST Council September 2025 newsletter, page 7. This source is cited together with that corroborating publication.

Entry 3

Source: GST Council Newsletter, September 2025: official commencement account

Source document: [Open source document](#)

Pinpoint: Page 7 of 18, Notification No. 16/2025-Central Tax: 1 October 2025 commencement and retrospective plant-and-machinery substitution from 1 July 2017.

Checked on: 2026-10-12

Verification scope: Official 18-page PDF downloaded; relevant page read and visually checked. Used for the specified statutory commencement update, not as an exhaustive current-law statement.

Entry 4

Source: Supreme Court review order dated 20 May 2025, Diary No. 1188/2025 in Civil Appeal No. 2948/2023

Source document: [Open source document](#)

Pinpoint: Signed order page 1; record of proceedings page 2.

Checked on: 2026-10-12

Verification scope: Complete two-page official PDF read. Review dismissed for no error apparent; no determination of the amendment's validity or effect.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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