Dipen D Shah & Associates
CHARTERED ACCOUNTANTS

Landmark Judgment:
Safari Retreats Pvt. Ltd.
vs.
Chief Commissioner of CGST

Date:

October 3, 2024

The Hon'ble Supreme Court of India delivered a significant judgment regarding input tax credit (ITC) under **Section 17(5)(c) and (d) of the CGST Act**, interpreting the phrases "plant or machinery" and "plant and machinery."

Key Findings:

Constitutional Validity Upheld:

- The court confirmed the validity of clauses (c) and (d) of Section 17(5) and Section 16(4), affirming their constitutionality.

Definition of "Plant or Machinery":

- The term "plant or machinery" in Section 17(5)(d) has a distinct interpretation and should not be conflated with the definition in Section 17.

Classification of Buildings

The classification of a mall, warehouse, or any building (other than a hotel or cinema theatre) as a plant is a factual question that must consider:

- The business of the registered person.
- The role that the building plays in that business.

If constructing a building is essential for supplying services (such as renting or leasing, as per clauses (2) and (5) of Schedule II of the CGST Act), it may be classified as a plant, thereby exempting it from the restrictions of clause (d) of Section 17(5).

A functionality test must be applied to determine whether a building qualifies as a plant based on the specific facts of each case.

Court Observations:

The Hon'ble Supreme Court clarified that they cannot make a final determination on whether the construction of immovable property by the petitioners constitutes a plant. Each case must be decided on its merits by applying the functionality test. Petitioners are encouraged to pursue appropriate proceedings to address these issues.

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