# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 30.10.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**
**and**
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.Nos.15932 and 23572 of 2022**
**and**
**W.M.P.Nos.15234 of 2022**

M/s.Noble Logistics Pvt. Ltd.,
(Represented by its Managing Director Chockalingam),
No.712, 2nd Floor, Harikrupa Complex,
McNicholas Road, Chetpet,
Chennai - 600 031. ... Petitioner in both W.Ps

-Vs-

1. The Union of India,
Represented by its Secretary
Ministry of Finance,
Government of India,
North Block,
New Delhi.

2. The Assistant Commissioner of Central Service Taxes
Circle-I,
Audit I Commissionerate,
1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

3. The Deputy / Assistant Commissioner of Central Taxes,

Purasawalkam Division,
North Commissionerate,
Newry Towers,
2054-I Block, 2nd Avenue,
Anna Nagar West,
Chennai - 600 040. ... Respondents in both W.Ps

**PRAYER in W.P.No.15932 of 2022 :** Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorari, calling for records of the impugned Show Cause Notice No.159/2022 dated 11.05.2022 issued by the second respondent and quash the same.

**PRAYER in W.P.No.23572 of 2022 :** Petition under Article 226 of the Constitution of India, praying for issuance of writ of declaration, declaring that the restriction on availment of Input Tax Credit imposed vide Section 17(5)(d) of the CGST Act, 2017 and Section 17(5)(d) of the TNGST Act, 2017 are ultra vires of Article 14 and Article 19(1)(g) of the Constitution of India; or in the alternative read down the said provisions to the effect that the term "own use" referred to therein would only refer to those cases, where the immovable property is used otherwise than by way of making any outward taxable supply.

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|---|---|---|
| For Petitioner in both W.Ps | : | Mr.G.Natarajan |
| For Respondents in both W.Ps | : | Mr.A.P.Srinivas<br>Senior Standing Counsel |

## COMMON ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.)**

In W.P.No.15932 of 2022, a show cause notice issued against the petitioner has been under challenge.

2. In W.P.No.23572 of 2022, the provisions, namely, Section17(5)(d) of the CGST Act, 2017 and Section 17(5)(d) of the TNGST Act, 2017 are under challenge.

3. Insofar as the prayer sought for in W.P.No.23572 of 2022, i.e., the validity of the said provisions of both CGST and TNGST Act is concerned, it is brought to our notice by the learned counsel appearing for both sides that, by the recent decision of the Hon'ble Supreme Court dated **03.10.2024**, in the matter of ***Chief Commissioner of Central Goods and Service Tax and Others Vs. M/s.Safari Retreats Private Limited and Others*** in ***Civil Appeal No.2948 of 2023 etc., batch***, the Hon'ble Supreme Court has upheld the validity of the said provisions. The conclusion by the Hon'ble Supreme Court in the said decision, reads thus:

*"64. As we are upholding the constitutional validity*

*of clauses (c) and (d) of Section 17(5), and as held earlier, its plain interpretation does not lead to any ambiguity, the question of reading down the provisions does not arise.*

*65. Some of our conclusions can be summarised as under:*

***a. The challenge to the constitutional validity of clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act is not established;***

***b. The expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17;***

***c. The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. 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 in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant.***

***Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a "plant" for the purposes of clause (d) of Section 17(5).***

*66. In the light of what we have held above, by setting aside the impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023, the writ petitions are remanded to the High Court of Orissa for limited purposes of deciding whether, in the facts of the case, the shopping mall is a "plant" in terms of clause (d) of Section 17(5). Appeals are partly allowed in above terms.*

*67. While deciding these cases, we cannot make any final adjudication on the question of whether the construction of immovable property carried out by the petitioners in Writ Petitions amounts to plant, and each case will have to be decided on its merit by applying the functionality test in terms of this judgment. The issue must be decided in appropriate proceedings in which adjudication can be made on facts. The petitioners are free to adopt appropriate proceedings or raise the issue in appropriate proceedings.*

*68. The writ petitions are rejected subject to the interpretation of clause (d) of sub-section (5) of Section 17 of the CGST Act made by us."*

4. In view of the said decision where the law has been declared, the challenge that has been made against the said provisions in W.P.No.23572 of 2022 has to be rejected, hence, W.P.No.23572 of 2022 is dismissed.

5. In view of the said decision having been made while dismissing the said W.P.No.23572 of 2022, now naturally the petitioner has to face the show cause notice which is impugned in W.P.No.15932 of 2022, in accordance with law.

6. In that view of the matter, W.P.No.15932 of 2022 also is liable to be dismissed, accordingly, it is dismissed.

7. Hence, both the Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**(R.S.K., J.) (C.S.N., J.)**
**30.10.2024**

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Secretary,
   The Union of India,
   Ministry of Finance,
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   New Delhi.

2. The Assistant Commissioner of Central Service Taxes
   Circle-I,
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**R.SURESH KUMAR, J.**
**and**
**C.SARAVANAN, J.**

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