

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6923/2019

(Hinganghat Integrated Textile Private Limited thr its Manager Vs. Union of India & ors.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. Bharatrai Chandani, Advocate with S.S. Malode, Advocate for petitioner.

Mr. C.J. Dhumne, Advocate for respondent Nos. 1 to 4.

CORAM: ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATED : 22/08/2025.

Heard Mr. Bharatrai Chandani, with S.S. Malode, learned counsel for petitioner and Mr. C.J. Dhumne, learned counsel for respondents.

2. The petitioner seeks to strike down section 17(5) (c) and (d) of the Central Goods and Service Tax Act, 2017 ("CGST Act, 2017") as violative of Article of 14, Article 19(1)(g), Article 21 and Article 265 of the Constitution of India.

3. The petitioner's counsel submits that the Hon'ble Supreme Court in case of *Chief Commissioner of Central Goods and Service Tax and Ors. Vs. M/s. Safari Retreats Private Ltd. & Ors. 2024 (90) GSTL 3 (S.C.)* has held that the aforesaid provisions are constitutional. That being so, the petitioner is now not pressing for the order on this count. The petitioner's counsel, however, has invited our

attention to the paragraphs 65, 66 and 67 which read as under:-

“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.”

4. The petitioner’s counsel seeks leave to approach respondent authority in terms of law laid down by the Hon’ble Supreme Court as noted above.

5. The request being reasonable, permission granted.
6. Petition is accordingly disposed of with liberty as prayed for.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)

Gohane