

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)  
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR  
THE STATE OF UTTARAKHAND**  
(Goods and Services Tax)

**Present:**

श्री अनुराग मिश्रा (सदस्य)

**Shri Anurag Mishra (Member)**

श्री रामेश्वर मीणा (सदस्य)

**Shri Rameshvar Meena (Member)**

**The 18<sup>th</sup> day of July, 2022**

अग्रिम विनिर्णय संख्या. 07/2022-23

**Ruling No: 07/2022-23**

in

आवेदन संख्या . 03/2022-23

**Application No: - 03/2022-23**

1	आवेदक Applicant	M/s Rameshwar Havelia with Trade name M/s Doon Valley Logistics, 271 KA, PO- Harrawala, Kuanwala, Haridwar Road, Dehradun, Uttarakhand- 248160.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Rajesh Gupta, Chartered Accountant
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Mrs. Preeti Manral, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	05.05.2022
7	सुनवाई की तिथि Date of Personal Hearing	17.06.2022 (Through video Conferencing)

**नोट:** इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा-100(1) के अन्तर्गत अपील दायर की जा सकती है।

**Note:** An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.



AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX  
UTTARAKHAND

PROCEEDINGS

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Rameshwar Havelia with Trade name M/s Doon Valley Logistics, 271 KA, PO- Harrawala, Kuanwala, Haridwar Road, Dehradun, Uttarakhand- 248160 (herein after referred to as the "applicant") and registered with GSTIN - 05AAMPH3802P1ZJ under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017. In the application dated 05.05.2022, the applicant submitted that M/s Doon Valley Logistics, is a Proprietorship Firm of Sh. Rameshwar Havelia and has prospected for establishment of a warehouse at Village Kuanwala, PO Harrawala, Dehradun, with a prime objective of leasing the same against rental. For the same the applicant duly constructed foundation by procuring inputs/ manpower and then for further construction of the structure, they entered into an agreement with M/s Lohaar Engineering and Construction Pvt. Ltd., (contractor) vide agreement dated 21.08.2020. The contractor as well as suppliers of inputs required for construction of structure are duly stood registered under the provisions of GST Act, 2017 and duly charged GST @18% on the value of works and deposited the same and the GST so deposited stands duly reflected in 2A/2B of the applicant. The applicant has already availed the ITC of GST paid by the contractor and is duly maintained in GST Credit Ledger, but no part of the same stands utilized till date. The availment of ITC on inward supplies of inputs/ input services is concerned, the same is available in terms of Sub-section (1) of Section 16, which reads "every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or service or both to him, which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person", but in terms of clause (c) of sub-section (5) of Section 17 of the GST Act, 2017 and explanation appended to the same, ITC of the aforementioned service stands blocked. That even if it be so, the applicant has developed an infrastructure for being leased out against rental and the said rental is leviable to GST. Thus, the applicant is eligible to avail the ITC on inputs/ input services received for development of the said infrastructure, hence this application.
2. In view of the above facts, 'the applicant' is seeking an advance ruling on the issue as to "Whether the Input Tax Credit on Inputs and Input Services received for development of the said infrastructure by the applicant is admissible to them or not"?
3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions; therefore, unless a



mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the SGST Act.

4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

6. Accordingly opportunity of personal hearing was granted to the applicant on 17.06.2022. Sh. Rajesh Gupta, Chartered Accountant, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submissions already made in their application and the additional submissions filed later.

6.2 During the course of hearing he referred to the judgement of the Hon'ble High Court of Orissa in case of Safari Retreats Pvt. Ltd., Vs. Chief Commissioner of CGST, Bhubaneshwar in WP(C) No. 20463 of 2018 wherein it has been held that ITC stands admissible in respect of inputs/ input services used for creation of such property which shall be leased out for rental, whereon GST is applicable. He also admitted that appeal against the said judgement has been admitted by the Hon'ble Supreme Court but no stay has been granted by the Apex Court for execution of the same and accordingly the decision of Hon'ble Odisha High Court was binding precedent as on date.

6.3 Ms. Preeti Manral, Deputy Commissioner and Sh. Deepak Biswal, Deputy Commissioner, SGST-Dehradun, Concerned Officers from the State Authority were also present during the hearing proceedings. Ms. Preeti Manral, Deputy Commissioner, presented the facts and submitted that Section (17) (5) (d) bars a taxable person, from taking input tax credit for construction of immovable property (as in the subject case) which is on his own account, even when such goods or services or both are used in the course or furtherance of business. The immovable property in the subject case is neither a plant nor machinery. Section 17(5) (d) provides that no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his



own account even if such inputs and input services are used in the course and furtherance of business, therefore, as per section 17(5) (d), no ITC is available on any goods or services received by him for such construction. Ms. Manral also pointed out that the applicant, inter alia, has placed reliance on the judgement of Hon'ble Odisha HC in case of Safari Retreats Pvt Ltd., however, the department has filed an appeal in the case of Safari Retreats Pvt Ltd., and the matter is sub-judice. She also pointed out that Ld. Maharastra AAR in the case of M/s Ashish Arvind Hasnoti, did not accept the views of Hon'ble Odisha HC (as held in case of Safari Retreats Pvt Ltd.) on the ground that though it gives relief to the party but it doesn't intend to hold section 17(5) (d) to be ultra vires, hence, two statements are contradictory to each other.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAMPH3802P1ZJ. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

- i) That the issue in the present application pertains to admissibility of Input Tax Credit of the GST paid on inward supplies received for establishment of a warehouse at Village Kuanwala, PO Harrawala, Dehradun, which has been established with prime objective of leasing the same against rental, whereon GST as applicable shall be discharged by the applicant in terms of Entry Serial No. 2(b) of Schedule -II of the Central Goods & Services Tax Act, 2017. Therefore, ITC of the GST Paid on all supplies received / used for creation of warehouse stands eligible to be allowed in terms of provisions of Section 16 (1) in as much as the said supplies are used or intended to be used in the course or furtherance of business.
- ii) Although in Section 17 of the GST Act, 2017, the availment of ITC on construction of immovable property has been restricted but the same has to be distinguished in the present case. The relevant portion of the Act is reproduced reads as under:

***"17. Apportionment of credit and blocked credits-***

***(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:***

***(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;***

***(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.***



*Explanation—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;”*

- iii) That, since in creation of infrastructure, all supplies required are actually plant and machineries, because the same is leased out for rental and that as per Industrial Policy of the Uttarakhand State, in case of Hotels, Subsidy has been allowed on Buildings etc. deeming the same as Plant & Machinery.
- iv) That it is pertinent to mention that the term “plant and machinery” has been defined in GST as “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.
- v) That if the said definition is perused it categorically states that Plant & Machinery shall include “apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports”. That so far as applicant’s case is concerned, the entire structure, which shall be used for leasing purposes, it fixed to earth by foundation and is capable of being removed and taken elsewhere without even distorting the original shape and form of the same. Thus, the entire structure, which is built on foundation, for leasing purposes, duly qualifies to be a Plant & Machinery and the applicant stand eligible to avail the benefit of ITC.
- vi) That in the instant case, they have received goods (Pre-fabricated Steel Structure – HSN-94060011) and services (erection of pre-fabricated steel structure) and that if the situations covered in (c) & (d) above are interpreted in present case of the appellant, it stands amply clear that they do not include a situation, wherein a property is being constructed for being leased out against a rental which is subjected to GST, because of the followings:
  - a. That so far as clause (c) is concerned; it only talks about contraction of an immovable property. That since this clause nowhere talks about nature of an immovable property or usage of an immovable property, therefore this clause has to be interpreted with reference to the basic objectives of implementation of GST, which included eradication of cascading effect of taxes. Thus, the term immovable property in clause (c) only indicates such property which is not being put to use for generation of revenue or to be used by an end consumer i.e. culminating in to break in the tax chain. And in the present case, the tax chain is not broken instead the construction of the warehouse will result in a fresh stream of revenues to the exchequer on the rentals generated by the warehouse.
  - b. The denial of input tax credit in such a situation would be completely arbitrary, unjust and oppressive and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect



- of multi-stage taxation and the inevitable increase in costs which would have to be borne by the consumer at the end of the day.
- c. Further, the Department has duly allowed ITC to a builder who sells building where completion certificate has not been issued at the time of sale (because the builder generates revenue which is subjected to GST), therefore ITC should not be denied to the applicant also because the applicant shall also be generating revenue which is subjected to GST, therefore denial of ITC to a person like the applicant is patently arbitrary and discriminatory.
  - d. Further, denial of ITC by invoking Section 17(5)(c) or (d) of both CGST and SGST Act leads to double taxation, i.e., firstly additional payment of GST on the Inputs/Services consumed in the construction of the warehouse and secondly, on the rentals generated by the same warehouse.
  - e. It is also a settled principle of interpretation of tax statutes that interpretation should be adopted which avoids or obviates double taxation. This principle is also directly applicable to the applicant's case. It would also be violative of the applicant's fundamental right to carry on business under Article 19(1)(g) of the Constitution as it would impose a wholly unwarranted and unreasonable and arbitrary restriction which would render warehouse now constructed for letting out uncompetitive, by imposing the burden of double taxation of GST on such buildings, i.e., firstly, on the inputs/services consumed in the construction and, thereafter, on the rentals generated by the building.
  - f. It is therefore, submitted that, in accordance with well-settled principles of interpretation of statutes, Section 17(5)(c) and (d) requires to be read down in order to confining the provision to cases where the building in question is constructed for the purpose of sale of the same post issuance of completion certificate, thereby terminating the tax chain, and by not applying Section 17(5)(c)/(d) to cases where the building in question is constructed for the purpose of letting out the same and where the tax chain is not broken.
  - g. The interpretation of Section 17(5)(c)/ (d) of both CGST Act and SGST Act, which leads to the conclusion that on the facts and circumstances of the present case the applicant is not entitled to avail the benefit of taking input tax credit while paying CGST and SGST on rent received from tenant of the warehouse, clearly goes against the intention of the Legislature and also frustrates the object sought to be achieved by the Legislature in enacting the said CGST Act and SGST Act. It is an undisputed fact that CGST Act and SGST Act are implemented to obviate the cascading effect of various indirect taxes and to reduce multiplicity of indirect taxes.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking the issue:



**8.2** Although the matter is sub-judice, even though we put forth our views on the issue raised by the applicant. In this regard we would like to refer to the relevant provisions of the CGST Act, 2017 which have direct effect on the case in hand. Section 16(1) of the Act stipulates that:

**“Section 16. Eligibility and conditions for taking input tax credit.—**

*(1) Every registered person shall, **subject to such conditions and restrictions** as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person”.*

From the wording of Section 16(1) of the CGST Act , 2017, we find that this section empowers the Central Government to impose conditions and restrictions on availing input tax credit and vide Section 17 of the CGST Act, 2017 such **“conditions and restrictions”** have been imposed. For ready reference relevant portion of Section 17 of the CGST Act, 2017, is reproduced hereunder:

**“Section 17. Apportionment of credit and blocked credits.—**

*(1)...*

*(2)...*

*.....*

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, **input tax credit shall not be available in respect of** the following, namely:—*

*(a) .....*

*.....*

*(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

**Explanation.—***For the purposes of clauses (c) and (d), the expression —construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;*

*(e).....*

*.....*



**Explanation.**—For the purposes of this Chapter and Chapter VI, the expression —plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.”

9. We find that powers to restrict flow of Input Tax Credit exist under Section 16(1) of the CGST Act, 2017, which empowers the Central Government to impose conditions and restrictions on availing input tax credit. This shows a Legislative intent that input tax credit may not always be allowed partially or fully and also that the Input Tax Credit (ITC) a provision does not provide for, that each and every all of the GAT paid is eligible to be availed of as ITC. Admissibility and availability of some of the Credits have been restricted under Section 17 in the Act itself.

9.2 In this regard, reliance is placed on the judgment of Hon'ble Delhi Court in the case of **Cellular Operators Association of India and Others vs. UOI [2018-TIOL- 310-HC-DEL-ST]** wherein the Hon'ble Court rejected the claim of the taxpayer to allow credit of unutilised education and higher education cess and upheld the power of the Government to restrict utilisation of balance cess.

9.3 We opine that GST is a new system of taxation which provides setting off of Input Tax Credit (ITC) against the output tax liability along the entire value chain till the final retail level. Under the earlier tax regime, credit of inputs was available for final product in respect of certain taxes/ duties only e.g. credit of duty of excise could not be utilised against VAT and vice versa. It can, therefore, be said that the GST is applicable only on value addition along the entire supply chain and thus cascading effect of taxes has been eliminated. Thus, under the GST regime, more input tax credit is available to tax payers along the entire supply chain as compared to the previous tax regime. Further, the transitional provisions under the CGST Act provide adequate credit of taxes accumulated under the erstwhile taxation regime to taxpayers in the GST regime. We observe that Section 17(5)(c) & (d) of the CGST Act, 2017 prescribes denial of credit for certain class of taxpayers with certain conditions and limitations. This would mean that the legislature has decided in its wisdom the credit of taxes which would be allowed in credit as ITC and the tax that has not been allowed, as policy call of the Government, given effect through legislation, cannot be obtained through judicial review. Few of the judicial pronouncements supporting the above stance are as under:

- i) In the judgment of JCB India Ltd. Vs. Union of India 2018-TIDL-23-HC-Mum-GST, the Hon'ble Court held- “CENVAT credit is a



*mere concession and it cannot be claimed as a matter of right- credit on inputs under the existing law itself is not absolute but a restricted or conditional right. If the existing law itself imposes condition for its enjoyment or availment, then, it is not possible to agree with the Counsel that such rights under existing law could have been enjoyed and availed of irrespective of the period or time provided therein- The period or the outer limit is prescribed in the existing law and the Rules of CENVAT credit enacted thereunder- In the circumstances, it is not possible to agree with the Counsel appearing for the petitioner that imposition of the condition vide Clause (iv) is arbitrary, unreasonable and violative of Articles 14 and 19(1) (9) of the Constitution of India- if right to availment of CENVAT credit itself is conditional and not restricted or absolute, then the right to pass on that credit cannot be claimed in absolute terms- there cannot be a estoppel against a statute- transitional arrangements that have been made have clear nexus with the object sought to be achieved and cannot be struck down as having no such relation or nexus-Petitions fail."*

- ii) Hon'ble Supreme Court, in its judgment in the case of Indian Oil Corporation Ltd. Vs State of Bihar (TS-347-SC-2017-VAT) while discussing the applicability of Article 14 to taxing statutes, held that:

*"When it comes to taxing statutes, the law laid down by this Court is clear that Article 14 of the Constitution can be said to be breached only when there is perversity or gross disparity resulting in clear and hostile discrimination practiced by the legislature, without any rational justification for the same".*

**9.4** Hence we opine that the right to practice any profession, or to carry on any occupation, trade or business, conferred by Article 19(g) of the Constitution is not absolute right and the government has the power to impose reasonable restrictions.

**10.** We find that the applicant has submitted that in view of Section 16 of the CGST Act, 2017, they being a registered person under GST are statutorily entitled to avail benefit of taking credit of input tax charged on supply of goods and services which are consumed or utilized for the construction of the aforesaid property and set off the same against CGST/SGST payable on output services provided by it to its customers from such property as there is no break in the supply chain.

**10.2** We find that the legislative intent flows from the sovereign power given in the CGST Act, 2017 vide Section 16(1) of the Act. As per said provision Input Tax Credit (ITC) is allowed to a registered person subject to such conditions and restrictions as the Government thinks proper, against the supply of goods or services received which are used or intended to be used in the course or furtherance of his business. Legislative intent is clear from aforesaid provision that if input supply of goods or services are received for furtherance of same business



for which these supplies are received than only input tax credit can be allowed. The wordings of Section 16 (1) of the CGST Act, 2017 i.e. "*any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business*" does not mean that any supply of goods or services received for the purpose of one business can be used for furtherance of another business. Further, Section 17(5)(d) of the CGST Act, 2017 provides that no input tax credit shall be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant & machinery). Thus, the legislative intent of the statute is clear from the very fact that any registered person is eligible for taking input tax credit unless and until he is restricted by conditions laid down in the law in this respect. One of such condition is prescribed vide Section 17(5) (c) & (d) of the CGST Act, 2017.

**10.3** We find that Article 14 of the Constitution of India reads as "*the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India*" and hence opine that Section 17(5)(c) & (d) CGST Act, 2017 is not violative of the Article 14 of the Constitution of India as it is applied equally to all the taxpayers of India if they are covered by the conditions and restrictions imposed by virtue of the powers given under section 16(1) of the CGST Act, 2017. The input tax credit for construction of immovable property is only available for those taxpayers who are engaged in supply of construction service and not for any other taxpayers who are beneficiaries of the output of such construction activity. The allegation of discrimination falls short of any substance as reasonable classification has been adopted by the legislature in demarcating eligibility for availment of such input tax credit.

**11.** The applicant submitted that the appeal in the matter of **CCE Vs Safari Retreats (P) Ltd & Others** was only admitted by the Hon'ble Supreme Court and there was no stay of said judgment and accordingly the decision of Hon'ble Odisha High Court was binding precedent as on date. They further submitted that this judgment will apply throughout the territory of India, unless and until the same is stayed by the Supreme Court or there is any contrary decision for the same from the jurisdictional High Court.

**11.2** We are of the opinion that judicial precedent is an interpretation of law by the Hon'ble Supreme Court which is binding on all the courts of India. For the said opinion we rely on the following judgment of the Hon'ble Supreme Court:

- i) In the case of **Bengal Immunity Co. v. State of Bihar - A.I.R. 1955 S.C. 661**, it was held that "*There is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public. Article 141 which lays down that the law declared by this Court shall be binding on all Courts within the territory of India quite obviously refers to Courts other than this Court. The corresponding provision of the Government of India Act, 1935 also makes it clear that the Courts contemplated are the Subordinate Courts.*"



- ii) The Five Judges Constitution Bench of Hon'ble Supreme Court in case of Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) SCC 673 observed that "The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength".
- iii) The Hon'ble Apex Court in **Megh Singh v. State of Punjab [AIR 2003 SC 2003 SC 2003 SC]** held that "one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect."
- iv) The Hon'ble Supreme Court in the case of **Hari Singh v. State of Haryana, reported in 1993 (66) E.L.T.23 (S.C.)**, held that, "It is true that the system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that Courts of co-ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on question of law. If Courts express different opinion on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy."
- v) The Hon'ble Apex Court in the Case of **Gammon India Ltd. v. Commissioner of Customs, Mumbai reported in 2011 (269) ELT 289 (SC)**, held that "two Tribunals should not take differently divergent views, which will create judicial uncertainty in declaring the law involved in identical issues. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. **It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.** We respectfully concur with these observations and are confident that all the Courts and various Tribunals in the country shall follow these salutary observations in letter and spirit."

12. Further, it is on record that Hon'ble High Court of Odisha's decision in case of Safari Retreats (supra) has also been challenged before the Apex Court, which is still pending decision. We also find that Civil Misc. Writ Petition No. 1898/2019 of M/s Rosewood Hospitality (P) Ltd., on similar issue is pending for decision with Hon'ble High Court Of Uttarakhand, wherein "the petitioner" has challenged the vires of the provisions contained in Section 17(5)(c) & 17(5)(d) of the Central Goods and Services Tax Act, 2017 (the CGST Act) and the provisions contained in Section 17(5)(c) & 17(5)(d) of the Uttarakhand Goods and Services Tax Act, 2017 (the UKGST Act) respectively for being ultra vires Article 14 of the Constitution of India in so much as it denies the petitioners and like persons from availing input tax credit (ITC) of the Central Goods and Services tax (CGST), Uttarakhand Goods and Services Tax (SGST/UKGST) and the Integrated Goods and Services Tax (IGST) paid



by them upon procuring goods and services to be used for construction of immovable property to be used in the course or furtherance of business.

13. We observe that Section 98(2) of the CGST Act, 2017 prescribes that

*"(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*

*Provided that the **Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant** under any of the provisions of this Act:"*

13.2 We are of the opinion that the above provision does not say that proceedings must be stayed by the higher court. The word used are 'pending' or 'decided' i.e. even if the issue is pending in any proceedings in the case of an applicant then the Authority shall not admit the application. In the case of Safari Retreats (supra), proceedings are pending before the Apex Court and in case of M/s Rosewood Hospitality (P) Ltd.; proceedings are pending before the Hon'ble High Court of Uttarakhand. **Since the appeal against decision passed in favour of Safari Retreats (supra) has been admitted by the Apex Court, hence the issue has become disputed and therefore, cannot be termed as judicial precedent.** Moreover we also observe that Ld. Maharashtra AAR in the case of M/s Ashish Arvind Hasnoti, did not accept the views of Hon'ble Odisha HC (as held in case of Safari Retreats Pvt Ltd.) on the grounds, that though, it gives relief to the party but it doesn't intend to hold Section 17(5) (d) to be ultra vires, hence, two statements are contradictory to each other

14. Further, we find that this authority vide Ruling No. 14/2020-21 dated 22.03.2021 while dealing with similar issue in the case of M/s Vardhan Holidays, Ramnagar, Uttarakhand, refrained from answering the said matter holding that the matter is sub-judice. Relevant portion of the order is reproduced as hereunder:

*"25. However from the plain reading of the provisions of Section 17(5)(c) of the Act, we are of the view that input tax credit is disallowed to a works contractor if he supplies his services for construction of an immovable property (other than plant & machinery) and if he is not a sub-contractor. Further, Section 17(5) (d) of the Act does not allow credit of input tax paid on goods or services which are received by a person who construct immovable property on his own account i.e. for self use. Since there is no service recipient of the said property till it comes into its complete shape, hence no credit is allowed. After completion of construction of hotel/banquet hall, the applicant is not going to sell it but using it for earning money by way of supplying services of room accommodation, restaurant and renting of banquet hall. **The applicant cannot say that he is not retaining the property for his own purpose. He got the hotel or***



**banquet hall constructed by availing the services of a works contractor so that he could run his business of hotel accommodation, restaurant and renting of banquet hall.** Therefore, we are also not in agreement with the findings of the Odisha High Court in the matter of M/s Safari Retreats (supra) that- "here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable".

Here in case of M/s Safari Retreats (supra), we find that the appellant are also earning rent from the shops rented by them therefore it cannot be said that they are not using the shopping mall for their own purpose. The shopping mall is being used in the course of their business of Renting of Immovable Property.

26. Though provisions of Section 17(5)(c)&(d) of the Act categorically denies credit of input tax for the specified supply yet we leave this issue raised by the applicant at question a) to d) of their application as the similar issue is pending before the Hon'ble High Court of Uttarakhand as well as before the Hon'ble Apex Court."

15. We find that the position has not changed since the passing of Ruling No. 14/2020-21 dated 22.03.2021 in the case of M/s Vardhan Holidays, Ramnagar and the matter is still sub-judice.

16. In view of the discussions held above, we order as under:

#### **ORDER**

**We refrain ourselves from answering the question raised by the applicant as the matter is sub-judice.**

  
**ANURAG MISHRA**  
(MEMBER)

  
**RAMESHVAR MEENA**  
(MEMBER)



**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX: UTTARAKHAND  
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND  
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

**F. No.: 3/S.Tax-UKD/GST/Sec-97/2022-23/DDN/2298 Date: 18.07.2022**

**Copy to:**

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-V, CGST, Dehradun for information and necessary action.
5. The Assistant Commissioner, Sec-VI, SGST, Dehradun for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.