

**BLOCKED CREDIT UNDER SECTION**  
**17(5)©(D):**

The Orissa High Court 2019-TOIL01088, in the case of Safari Retreats (P) Ltd, which permitted avaiement of ITC on GST paid on raw materials such Cement, Steel, Sand, Construction Material, Sanitary, Electrical, Wooden items and other tax paid items for construction, development, erection, installation and commission of Office Complex, Shopping Complex, Cinema Halls, Malls, would be allowable. On appeal by the Department, Supreme Court did not grant stay and hence, the judgment and principle of law laid down is fully applicable.

2: Hence in the light of the above, the assessee may take credit and utilize the same for payment of tax on output service and in future, if it is held by the Supreme Court that no ITC is available, the ITC, so utilized, shall have to be reversed with interest but no penalty is imposable in view of the fact that ITC has been taken pursuant to judgment of High Court.

3: At the same time, one more option left with the assessee is to take ITC in the Credit Ledger to avoid limitation as provided under Section 16(4), but do not utilize the same. If in future, the Supreme Court holds that no ITC is available, the assessee will have to at best reverse the credit without any interest as they have not utilized the ITC and obviously, there is no question of imposition of penalty.

4: In Section 17(5)©, the words used are “works construct” service when supplied for “construction” of immovable property”. The words used are “for” and not “in relation to” –. In my view, the meaning of the word “for” carry restrictive meaning and whereas “in relation to” as used in Cenvat Credit Rules, 2004, carry very wider and expansive interpretation.

5: Hence, in my humble view, under Section 17(5)© , at the best, what would be restricted is (a) construction materials (b) inputs services (c) capital goods by virtue of immovable property emerges. After emergence of civil structure ( which is admittedly a immoveable property), other inputs such as (a) air-conditioning (b) electrical equipments (c) sanitary items (c) wooden items (d) elevators & lifts (e) DG Sets (f) Fittings, (g) Painting and Polishing and (h) Post Construction activities, cannot be held to be immoveable but only moveables and, therefore, in my view, there cannot be any bar in taking credit.

6: If we carefully analyze the definition of works contract as given in Section 2(119), it split into construction and other 14 items. Needless to say Section 17(5)© deny ITC on inputs and input services only where construction results in immovable property but cannot be stretch to deny the ITC on other 13 activities as clearly spelt out in the definition of works contract – Section (119) . In my view, activities like Furniture & Fittings and such other similar items in immoveable property, is not barred.

7: AAA Karnataka in Wework India Management P Ltd Ruling 106/2019 allowed ITC on 14mm Engineered wood and Oak Top Wooden Flooring was allowed.

8: AAA Karnataka in Keshav Cements & Infra P Ltd MANU/\_AR/0270/2019 had held in puts and input services (except goods as it's user is not clear from documents submitted) used for setting up solar power plant ( few kms away from the main plant to manufacture cement) for generation of electricity which is exempt but used captivly for the manufacture of finished goods, allowable. Further held that input or inputs answering to the definition of Plant and Machinery as given in 17(5) shall be eligible provided electrical energy is entirely captivly consumed and not sold outside.

9: Nipro India Corpn P Ltd AAA Maharashtra 2018(98taxmann.com Page 319).internal finishing work, External Sewerage System, Internal Sewer and venting system, sanitary were and CP fittings, AC Equioment, AC piping work and accessories, Ventilation Fans, Air Distribution System, Automatic Control System, Compressed Air Supply System, Steam Supply System, Process chilled water supply system, purified water supply system, N2 Supply System, Process Waste water supply system, Local Exhaust System, DG Set, Main Feeder Distribution System, Emergency and Exit light system, telephone system, Lan system, PA address system Light Protection System ( except pure civil work) allowed.

10: Appellate Authority for AAA Orissa MANU/AI/0004/2019 ITC has held that for gardening and plantation within plant area ( even at minning area far outside the factory) and other business establishment will qualify for ITC as it control pollution and atmospheric temperature.

11: AAA Uttarakhand MANU/AR/0056/2018 has held that ITC on office furniture & fixtures AC plant is allowable in the view of the judgement of CESTAT, New Delhi Bench in Balkrishna Industries Ltd MANU,/CE/0885/2015. AAR is relying on cestat judgement and therefore it is completely illogical to ignore the decisions on the same issues, of various High Courts on both Works Contract and Plant and Machinery when definition of Plant and Machinery is now much enlarged.

12: The ITC on building repairs, maintenance, upkeep would depend upon accounting treatment given to expenses. If expenditure treated as a revenue expenditure, ITC would be allowed and if capitalized, no ITC would be allowed. In the case of Rambagh Palace Hotels (P) Ltd, AAA Rajasthan has allowed the ITC on Furniture, Fixtures, etc.etc.

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