

Will Malls and Warehouses Automatically Get ITC After the Supreme Court Judgment?



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The Supreme Court's recent judgment in the Safari Retreats case has sparked interest across businesses, particularly those engaged in real estate development and commercial leasing. The core issue revolved around whether the construction of malls, warehouses, and other immovable properties would qualify for Input Tax Credit (ITC) under the CGST Act. The ruling has provided a clearer pathway for businesses to claim ITC, but it is important to understand its scope and implications.

- **Key Takeaways for Businesses:**

1- No Automatic ITC for Malls and Warehouses:

The judgment does not provide automatic entitlement to ITC for malls and warehouses. The Supreme Court has clearly stated that each case will be assessed based on its specific facts, particularly through the functionality test. This means that businesses cannot simply claim ITC on the construction of any immovable property; they must prove that the property serves as a plant for their taxable output services.

2- The Role of the Functionality Test:

The Court has reiterated the importance of the functionality test in determining whether a building qualifies as a plant. For malls or warehouses to be considered plants, businesses must demonstrate that the construction is essential for their taxable activities, such as renting or leasing space.

For instance, if a mall is built for the purpose of leasing out shops, the business must prove that without this construction, it would be unable to provide the taxable service (i.e., renting out space). The function of the building in generating taxable income is the key factor that will determine ITC eligibility.

3- ITC Eligibility is Not Blanket Coverage:

The judgment does not offer blanket ITC coverage for all construction projects involving malls or warehouses.

4- Instead, it introduces a case-by-case assessment:

Businesses must show that the nature of the construction is crucial to their ability to generate taxable output services.

The Court's ruling applies specifically to cases where the building itself is integral to generating income through activities like renting, leasing, or providing other taxable services.

5- Practical Implications for Businesses:

While the judgment is a positive development for businesses in sectors like real estate, commercial property, and leasing, it does not eliminate the need for scrutiny. Each business that constructs malls, warehouses, or similar properties must provide evidence that the construction qualifies as a plant under the CGST Act.

6- In practical terms, this means businesses will still have to prove that:

The construction is essential for delivering their taxable services.

The building plays a functional role in the business, meeting the essentiality and functionality tests.

The services generated by the building (such as renting out spaces) are directly tied to the taxable output.

7- Long-Term Impact:

The ruling is certainly favorable for businesses, but the onus remains on them to demonstrate that their properties qualify as plants. The Court's reliance on the functional use of the building means that malls and warehouses can indeed qualify for ITC, but businesses must be prepared to justify their claims.

In summary, while the Safari Retreats judgment opens the door for ITC claims on construction, businesses cannot assume automatic entitlement. They must prove, on a case-by-case basis, that their properties meet the functional test and are integral to their taxable operations. As a result, businesses may need to approach ITC claims with a strategic and well-documented approach to avoid disputes with tax authorities.

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