APHC010357632023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

<u>WRIT PETITION NO: 18418/2023</u>

Between:

1. INDO AMERICAN SUPERSPECALITIES LIMITED, TS NO.567 AND 568, SYAMALADAS AGRAHARAM, OPP . GUNTA ROAD, NAAZ CENTER, GUNTUR DISTRICT. REPRESENTED BY ITS MANAGING DIRECTOR, SRI K.SIVARAMAKRISHNA.

...PETITIONER

AND

1. ASSISTANT COMMISSIONERST, KOTHAPET CIRCLE, GUNTUR DIVISION, GUNTUR.
2. JOINT COMMISSIONER ST, GUNTUR II DIVISION, GUNTUR.
3. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI 110001.
4. STATE OF ANDHRA PRADESH, REPRESENTED BY ITS SPECIAL CHIEF SECRETARY, REVENUE (CT) DEPARTMENT, A.P. SECRETARIAT, VELAGAPUDI, AMARAVATHI MANDAL, GUNTUR DISTRICT.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased the petitioner prays that this Hon'ble Court may be pleased to issue a Writ or order or direction particularly one in the nature of Writ of Mandamus declaring Section 17(5)(d) of the CGST Act, 2017 / APGST Act, 2017, in denying Input Tax Credit to the construction of immovable property which is meant for letting out or leasing our of the immovable property, as arbitrary, unjust, oppressive and is directly opposed to basic rationale of the Goods and Services Tax itself, reading down for the purpose of interpretation in continuation to give benefit to the taxable person who has paid GST and allow the claim of Input Tax Credit in respect of lease / renting out the immovable property by setting the impugned assessment order passed by the first respondent in Form GST DRC - 07, in Case Id No. AD371221003638C, dated 05.06.2023, for the tax period July, 2017, to March, 2022, and to pass

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Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased pending disposal of the Writ Petition, grant stay collection all further proceedings arising in pursuance of the impugned assessment order passed by the first respondent in Form GST DRC - 07, in Case Id No. AD371221003638C, dated 05.06.2023, for the tax period July, 2017, to March, 2022 or to pass such further or other orders as this Hon'ble Court may deem flt and proper in the circumstances of the case. pending disposal of the above writ petition and to pass

Counsel for the Petitioner:

1. S SURI BABU

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

The Court made the following:

The Court made the following Order:
(per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner here in, which is a registered person, had constructed a multiplex for renting out to various customers. The petitioner, sought input tax credit in relation to the taxes paid on the goods and services received in the construction of multiplex, for the year 2017-18 to 2021-2021. The assessing authority by an order dated 05.06.2023, completed the assessment for this period. In the course of such assessment, the assessing authority had held that section 17 (5) (d) of the A.P GST Act barred ITC being given in relation to inputs which go into construction of immovable property.

2. The petitioner being aggrieved by this order had approached this Court with the contention that section 17(5) (d), while barring ITC being given on goods or services received during construction on immovable property, permitted such ITC in relation to plant and machinery. It is the case of the petitioner that the said multiplex should be treated as a plant and machinery.

3. Sri.S.Suribabu, learned counsel for the petitioner who relied upon the judgment of Hon'ble Supreme Court in the case of "***Chief Commissioner of central goods and service tax & Ors Vs. Safari Retreats Private Ltd. & ors***" dated 03.10.2024 in the Civil

Appeal.No.2948 of 2023[1]. The Hon'ble Supreme Court while disposing of the said Civil Appeal had held as follows :

> *"The question whether a mall, warehouse or any building other than a hotel or 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)".*

4. In that view of the matter it would be appropriate to remand the matter back to the assessing authority to conduct the exercise indicated by the Hon'ble Supreme Court.

5. Accordingly, this Writ Petition is disposed of, setting aside the order of assessment dated 05.06.2023, with a direction to the assessing authority to apply the test set out in the judgment of Hon'ble Supreme Court and to pass order of assessment thereafter. Needless to say said order shall be passed after notice and

[1] 2025 (2) SCC 523

opportunity is given to the petitioner. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any shall stand closed.

R. RAGHUNANDAN RAO, J

T. C. D. SEKHAR, J

Date:22.04.2026
CMK