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Interpreting 'Own Account' and 'Plant and Machinery': A Practitioner's Guide to ITC on Civil Structures

The article critically examines the evolving interpretation of Section 17(5)(d) of the CGST Act concerning Input Tax Credit (ITC) on immovable property. It discusses the Safari Retreats judgment, which introduced the functionality test, and contrasts it with the retrospective amendment in Finance Act 2025 aligning clause (d) with clause (c). It also analyzes the Bharti Airtel ruling's six-fold test for movability. Through practical tests and case law, the article argues for a harmonized reading of exclusions and emphasizes that if an asset serves as a business tool, it may still qualify as "plant and machinery," allowing ITC eligibility.

Introduction

Although the Safari Retreats judgment has a significant impact by introducing the functionality test to determine whether a building qualifies as a Plant, its influence has been short-lived due to a recent retrospective amendment proposed in the Union Budget 2025–26. Acting on the recommendations of the 55th GST Council Meeting, *"plant or machinery"* in Section 17(5)(d) has been replaced with *"plant and machinery"* to ensure consistency with the language used in Section 17(5)(c). Consequently, the explanation to Section 17(5), which defines *"plant and machinery,"* will now also apply to the provisions under Section 17(5)(d). [**Kindly note that retrospective amendment has not yet been effective**]

The *Safari Retreats* judgment also underscored that the phrase "on his own account" in clause (d) of Section 17(5) should be interpreted with a **purpose, rather than a narrow or literal approach**. Notably, this interpretation remains untouched by the Finance Bill, 2025.

In contrast, the Bharti Airtel judgment has had a lasting impact on the availability of CENVAT credit on Telecommunication towers. The ruling provided a comprehensive analysis by laying down six guiding principles for determining whether a property qualifies as movable or immovable. These principles include: (i) the nature of annexation, (ii) the object of annexation, (iii) the degree of permanency, (iv) the intention of the parties, (v) the functionality test, and (vi) the marketability test. Based on these criteria, the classification of a property as movable or immovable is to be assessed.

Assessment of Input Tax Credit Eligibility on Inputs and/or Services Used for Construction of Immovable Property - Section 17(5)(d)

In this case, the restriction applies to the project owner or the end user, and more importantly, for determining the eligibility of Input Tax Credit, the assessment must be made from the perspective of the recipient of the taxable supply - commonly referred to as the *recipient's test*.

Given the restriction under clause (d), input tax credit (ITC) is not available on goods or services (or both) received by a taxable person for the construction of an immovable property on their own account. However, there are two key exceptions to this restriction:

- Where the construction relates to plant and machinery; and
- Where the construction is not on the taxpayer's own account.

In light of the above, a three-step test should be applied to determine the eligibility of ITC on inputs and/or services used in the construction of immovable property.

a. The goods and/or services are received by a taxable person for the construction of immovable property or movable property.

b. The goods and/or services are received by a taxable person for the construction of immovable property, whether for his own account or otherwise.

c. The goods and/or services are received by a taxable person for the construction of immovable property, whether such property qualifies as "*plant and machinery*" or not.

I. Test 1 : Immovable Property or not

The first test is to examine whether the inputs and/or services received

"If a solar power plant remains operational after being dismantled and is not location-dependent, it is considered movable. Conversely, if dismantling renders it non-functional or unfit for use elsewhere, it is treated as immovable."

are used for the construction of an immovable property or movable property. As the term *immovable property* is not defined under the GST law, its interpretation must be drawn from the General Clauses Act and the Transfer of Property Act.

Notably, the recent Supreme Court judgment in the case of Bharti Airtel Limited has set out six guiding principles for determining whether a property qualifies as movable or immovable. In light of these principles, the nature of the property must be assessed. If, upon such assessment, the property is found to be movable, input tax credit (ITC) on goods and/or services used for its construction would be admissible.

Notably, in the explanation for the purposes of clauses (c) and (d) of Section 17(5), the following items are outside the purview of the definition of Plant and Machinery:

i. Land, building or any other civil structure

ii. Telecommunication towers

iii. Pipelines laid outside the factory premises

The restriction on Input Tax Credit (ITC) in relation to the above three items applies specifically to the construction of immovable property. The exclusion of certain items from the definition of "*plant and machinery*" does not automatically render those items immovable in nature. Therefore, if an article qualifies as movable property based on the criteria laid down by the Supreme Court in Bharti Airtel Limited, ITC on such goods or services would remain admissible.

Examples –

To assess the credit eligibility of a a solar power plant, the first step is to determine whether they qualify as immovable property, based on the six principles established in the Bharti Airtel judgement.

a. **Degree and Object of Annexation** – It is essential to analyze the degree of attachment, which may differ depending on whether the installation is ground-mounted (suggesting a more permanent setup) or rooftop-mounted. However, even where solar modules are affixed to a civil foundation which is embedded in the earth, such attachment would render the structure immovable only if the modules are installed for the permanent and beneficial enjoyment of the civil foundation itself. Conversely, if the civil foundation is embedded in the earth solely to facilitate the effective and enduring functioning of the solar power generating system, and not the other way around, then the system cannot be regarded as immovable property.

b. **The Degree of Permanency** – It is essential to assess whether the plant can be dismantled and reinstalled at another location. The mere fact that the plant is fixed to a foundation using nuts and bolts does not, by itself, render it permanently attached to the earth, particularly if such a foundation is required solely to ensure stable and vibration-free operation of the machinery.

   The owner's intention is key i.e., if the structure serves a temporary, project-specific purpose, it indicates movability; if intended to become a permanent part of the land or building, it is deemed immovable.

c. **The Object of Annexation** – Even if a solar power plant is fixed to a civil foundation for operation efficiency, that will not make the power plant an item of immovable property and it may also happen that some of the items may be assembled on site. That too will not make any difference to the principle. The test is whether the installed solar power plant can be sold in the market. In case it can be sold in the market, then the solar power plant must be a movable property.

d. **The Intention of the Parties** – The solar power plant, when affixed to a civil structure using nuts and bolts, does not become permanently integrated with the land or building. This attachment is merely to provide structural stability and ensure a wobble-free installation, enabling the plant to operate effectively. The purpose of such affixation is not for the permanent beneficial enjoyment of the land or building but to support the plant's optimal functioning and ensure uninterrupted service delivery.

e. **The Functionality Test** – If a solar power plant remains operational after being dismantled and is not location-dependent, it is considered

movable. Conversely, if dismantling renders it non-functional or unfit for use elsewhere, it is treated as immovable.

f. **The Marketability Test** – A structure is considered movable if it can be disassembled and sold or transferred, either wholly or in parts, without losing its utility. However, if it cannot be marketed without being damaged or destroyed in the process, it is regarded as immovable.

II. **Test 2: Receipt of Goods/ Services for Construction of Immovable Property on his own account or not**

A new line of jurisprudence has emerged through the *Safari Retreats* judgment concerning the interpretation of the phrase *"on his own account."* The judgment emphasized that this phrase should be read down and interpreted with a purposive approach rather than a narrow or literal one. In essence, if a person constructs a property and subsequently uses it for taxable outward supplies, such as leasing the premises and charging GST, such construction cannot be regarded as being undertaken *on his own account*. Consequently, Input Tax Credit (ITC) in such cases should be permitted.

Construction is said to be on a taxable person's "own account" in two scenarios –

i. Made for personal use and not for provision of service.

ii. When used as a setting for carrying out own business.

On the other hand, construction cannot be said to be on taxable person's "own account", if it is intended to be sold or given on lease or license.

Let's now explore the meaning of the phrase *on his own account* with the help of some examples.

Examples –

- **XYZ Ltd. received various goods and/or services for construction of an office building or factory building**

  Scenario 1: XYZ Limited further leases out whole units in the office/factory building to customers and discharges output GST on the rental income. In such a case, it cannot be construed that the construction of the immovable property is undertaken on its own account. Accordingly, Input Tax Credit on goods and/or services received for the construction of such immovable property shall be allowable.

  Scenario 2 : XYZ Limited uses the office/factory building for its own purpose and in this case, no further GST on the sale/lease of such a building occurs and accordingly the embargo under Section 17(5)(d) on ITC will apply as it is construed on his own account.

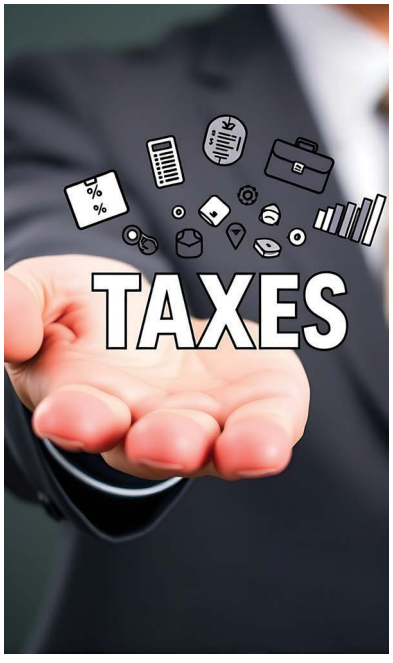
- **XYZ Ltd. received various goods and/or services for construction of DATA warehouse which is to be used as a cloud service**

  In this case, the data warehouse is intended to be used for storing client data, meaning the immovable property is directly utilized for providing taxable supplies on which GST is payable. Consequently, the restriction under Section 17(5)(d) on availing Input Tax Credit (ITC) would apply, as the construction is deemed to be undertaken on the taxpayer's own account.

> "Input Tax Credit (ITC) is not barred in respect of goods or services used for the construction of an immovable property, which qualifies as plant and machinery as so defined in explanation to clauses Section 17(5)(c)."

III. **Test 3: Goods and/or services are received by a taxable person for the construction of immovable property, whether such property qualifies as "Plant and Machinery" or not**

The third test involves examining whether the resulting immovable property falls within the scope of "*plant and machinery*" as defined in the Explanation to clauses (c) and (d) of Section 17(5) of the CGST Act.



As stated in the supra, the retrospective amendment substituting the term *"plant or machinery"* with *"plant & machinery"* in Section 17(5)(d) of the CGST Act, 2017 has been introduced vide Section 124 of the Finance Act, 2025, and the said amendment has come into force w.e.f. 01-10-2025.

Input Tax Credit (ITC) is not barred in respect of goods or services used for the construction of an immovable property, which qualifies as plant and machinery as so defined in the explanation to clauses Section 17(5)(c). According to the definition, "plant and machinery" refers to an *apparatus, equipment, or machinery* that is fixed to the earth by means of a foundation or structural support and is used for making outward supplies of goods or services or both. It also includes such foundation or support structures. However, it explicitly excludes:

- land, buildings or any other civil structures,
- telecommunication towers, and
- pipelines laid outside the factory premises.

Following the retrospective amendment introduced by the Finance Act 2025, substituting the expression *"plant or machinery"* with *"plant and machinery"* in Section 17(5)(d) of the CGST Act, 2017, the core issue that now arises is whether, in light of the functionality test propounded in the *Safari Retreats* judgment, buildings can still be regarded as falling within the ambit of "plant." To examine this proposition more closely, a few illustrative examples may be construed.

I. **Data Warehouse as Cloud Service:** Since the building has been specifically planned and constructed for the purpose of storing client data, it can be classified as a "plant" by applying the principle laid down in the **Karnataka Power Corporation [(2002) 9 SCC 571] Judgment**, which held that a building which has been planned and constructed as to serve special technical requirements of the assessee may be treated as a plant.

II. **Power Generating Station:** The Hon'ble Apex Court held in the case of **Karnataka Power Corporation** that the assessee's power generating station building is an integral part of its generating system, and therefore, the same could be treated as a plant.

III. **Installation of Sanitary Fitting and Pipelines in a Hotel:** The Apex Court held in the case of **Andhra Pradesh vs. Taj Mahal Hotel [(1971) 82 ITR 44]** that the installation of sanitary fitting and pipelines in a hotel constitute "plant".

IV. **Cold Storage Building**: Calcutta High Court in the case of **Commissioner of Income-Tax vs. Shree Gopikishan Industries Pvt. Ltd. on 11 June, 2003,** held that building of a cold storage is a plant.

Even after the amendment, it can still be contended that the aforementioned buildings or immovable properties,

being an essential tool of trade with which business is carried on, may qualify as "plant and machinery," thereby reinforcing the relevance of the functionality test.

As evident from the above, applying the functionality test, as laid down by the Hon'ble Supreme Court in the *Safari Retreats* judgment, structures such as data warehouses, power generating stations, and installations like sanitary fittings may fall within the scope of "plant." However, this interpretation appears to be at conflict with the explicit exclusion of *"land, buildings, or any other civil structures"* from the definition of *"plant and machinery"* under the Explanation to Section 17(5) of the CGST Act, 2017.

It is a well-settled principle of statutory interpretation that when two or more provisions of a statute appear to be in conflict, they must be read harmoniously. The aim is to interpret them in a way that gives effect to each provision, ensuring that none is rendered redundant or ineffective.

Applying this principle, the exclusion of "building" or "civil structure" should be interpreted to apply only to those structures that merely provide the backdrop or setting for business activities, and not to those that

function as essential means or tools for carrying on the business itself.

Post Bharti Airtel Judgement Era

- In the case of **Sterling & Wilson Private Limited** [**Writ Petition No. 20096 of 2020**], the primary issue was classification of the supply and installation of a solar power generating system. The tax authority held the transaction to be a "works contract" (immovable property) and levied a tax of 18%, whereas the petitioner objected to the same on the ground that the activities of the petitioner would have to be treated as composite supply. The Hon'ble High Court of Andhra Pradesh had observed that the solar power generating system, while attached to the ground, was not embedded for permanent beneficial enjoyment of the land but rather, the foundation served the system. Therefore, the supply is not a "works contract" but a "composite supply" as defined under GST law.

  Relying on the similar ratio of Bharti Airtel Judgement, in the present case, it was held that the installation of a solar power generating system would qualify as movable property and thus the said supply is not a works contract, but composite supply as a works contract requires the involvement of an immovable property.

Post Safari Retreats Judgement Era

- In the case of **Shibaura Machine India Pvt. Ltd.** [**Advance Ruling No. 36/ARA/2025 dated 02-09-2025**], the Advance Ruling Authority of Tamil Nadu has ruled that structural supports erected specifically for the overhead crane and HVAC machinery fall within the extended definition of *"plant and machinery."* Accordingly, the proportionate Input Tax Credit (ITC) attributable exclusively to the secondary steel structural supports associated with the overhead crane's movement and the HVAC system is not excluded under Section 17(5) of the CGST Act, 2017, and is therefore eligible for the applicant to claim.

  Although the aforesaid ruling refrained from employing the functionality test when classifying the structural supports specifically erected for the overhead crane and HVAC equipment as *"plant and machinery,"* it nonetheless adopted a comprehensive and expansive construction of the term *"plant and machinery."*

Conclusion

The interpretation and application of Section 17(5) of the CGST Act, 2017, particularly clause (d), continue to be complex and evolving. The *Safari Retreats* judgment brought to light a purposive interpretation of the phrase *"on his own account"* and reaffirmed the relevance of the functionality test in determining whether an immovable property can be treated as "plant." Subsequent to the Supreme Court's dismissal of the Review Petition filed by the Revenue [Review Petition (Civil) Diary No(s). 1188/2025 in C.A. No. 2948/2023], the issue has become final and conclusive.

However, the retrospective amendment introduced through the Finance Act, 2025, substituting *"plant or machinery"* with *"plant and machinery"* in clause (d), has introduced new interpretational challenges. While it brings clause (d) in line with clause (c), it also reinforces the statutory exclusion of *"land, buildings, or any other civil structures"* from the definition of plant and machinery.

Nonetheless, the consistent judicial emphasis on the functionality and purpose of the asset, as seen in the Safari Retreat Case, suggests that if an immovable structure functions as an integral tool of trade, beyond serving as a mere location, it may still be contended to fall within the scope of *"plant and machinery"*.

In this context, the principle of harmonious construction becomes essential. Rather than allowing the exclusion clause to override the entirety of the definition, the courts may adopt an interpretation that preserves the legislative intent while ensuring that structures genuinely functioning as tools of business are not unfairly denied Input Tax Credit.

As jurisprudence continues to develop and the retrospective amendment awaits notification, taxpayers, particularly those in infrastructure-heavy sectors like IT, telecom, and commercial real estate, must carefully evaluate the purpose, design, and use of constructed assets to determine ITC eligibility. Until further clarity emerges through judicial or legislative intervention, a case-specific, functionality-driven assessment remains the most prudent approach.

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