



Understanding the Safari Retreats Decision: ITC implications on Immovable Property

October 2024

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Overview of Supreme Court Decision in Safari Retreats Case

Background

Facts of the case

- **Business Nature:** Construction of a mall intended to be leased out to tenants. Rental income from leasing liable to GST.
- **ITC Claim :** Claimed ITC on inputs used for mall construction on the fact that the building would be used to provide taxable rental services.

Issue

- **Denial of ITC :** Mall qualified as an "immovable property in terms Section 17(5)(d) of the CGST Act, 2017

Orissa High Court Decision (2019)

- **Allowed ITC Claim by reading down section 17(5)(d):** Section 17(5)(d) must be interpreted to allow ITC for properties leased for taxable services, avoiding double taxation (tax on inputs & outputs). Ruled that renting a constructed building should not bar the right to claim ITC

Revenue challenged the Orissa HC's decision of reading down section 17(5)(d) and upholding denial of ITC on building, civil structures etc. before the Apex court, focusing on the literal interpretation

- **Issue before Supreme Court** – Constitutional validity of restriction of ITC and definition of "plant" under Section 17(5)(d)?

Overview of Supreme Court Decision in Safari Retreats Case

Submissions before the Supreme Court



Revenue Contention

- 1. Literal Interpretation:** Section 17(5) must be applied as written, disallowing ITC unless the property is sold before completion. It is not uncommon to read “and” as “or” or “or” as “and”. Accordingly, the expression “plant or machinery” must be read as “plant and machinery”
- 2. Legislative Intent:** ITC was intentionally blocked on construction to avoid **double benefits**, as the constructed property itself contributes to revenue generation.
- 3. No Ambiguity:** The law is clear in prohibiting ITC on immovable property unless it is further supplied as goods.



Respondent Contention

Violative of Article 14 of the Constitution

Rental Income is Taxable Supply: Since GST is paid on rent, inputs used to construct a property generating such income should be eligible for ITC.

Cascading Effect: Denial of ITC leads to a **tax cascading effect**, ultimately increasing the cost of services and creating **tax inefficiency**.

Doctrine of Reading Down: Section 17(5)(d) should be read down to allow ITC where properties are used to provide taxable services, ensuring fairness in taxation.

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Supreme Court's Analysis



Literal vs. Intentional Interpretation

Section 17(5)(d) uses the phrase "plant or machinery", the term "plant and machinery" is used in other sections of the Act. This distinction is crucial.



Different Connotation

The phrase "plant or machinery" signifies that either a plant or machinery could qualify for input tax credit (ITC) under certain conditions.



Commercial Interpretation

"Plant" is not defined under the CGST Act, the court applied the functionality test, where the meaning of "plant" is determined by its role in business operations.



Functionality test:

If a building serves as a tool of trade, playing an essential role in business activities (such as a mall or warehouse used for renting), it could be classified as a plant.



Judicial decisions:

Several previous decisions (e.g., CIT v. Taj Mahal Hotel and Solid and Correct Engineering Works, Anand theatre, Commr. Income tax Vs. Karnataka Port) reinforce that buildings or structures that serve specific business functions can qualify as "plants".

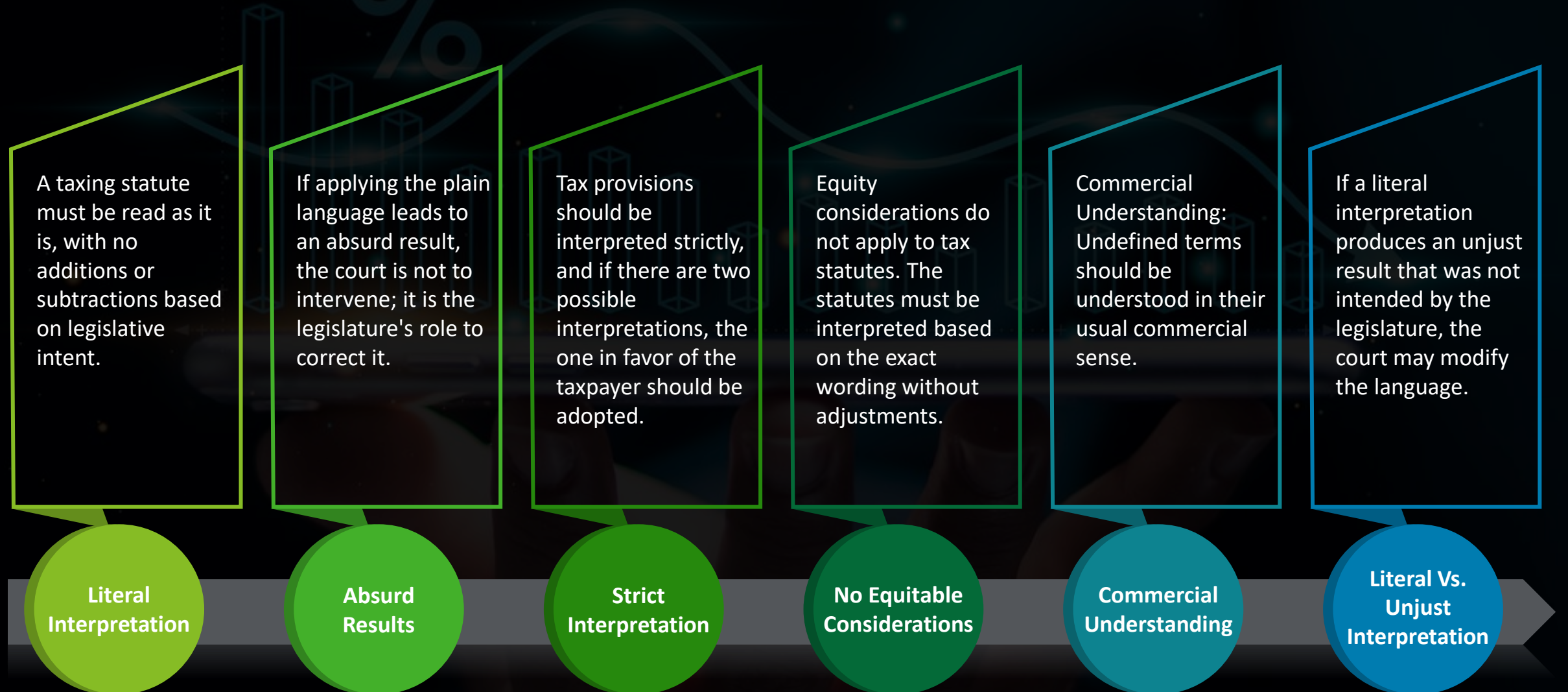


Remand to High Court:

The case is sent back to the Orissa High Court to apply the functionality test and determine the ITC eligibility though plea on constitutional validity is rejected.

Overview of Supreme Court Decision in Safari Retreats Case

Interpretation of Taxing Statutes



Overview of Supreme Court Decision in Safari Retreats Case

Business Impact



Re-assess ITC eligibility

- With the recent extension of GST credit availment deadlines, businesses have an opportunity to reassess their past transactions and recover eligible credits.



Impact on Real Estate and Leasing Business Models

- Businesses constructing malls, commercial complexes, or leasing properties will need to reassess their financial models.



Deloitte Survey

- 86% of participants advocated for a review of Section 17(5) restrictions, this ruling may prompt the GST Council to issue further clarifications

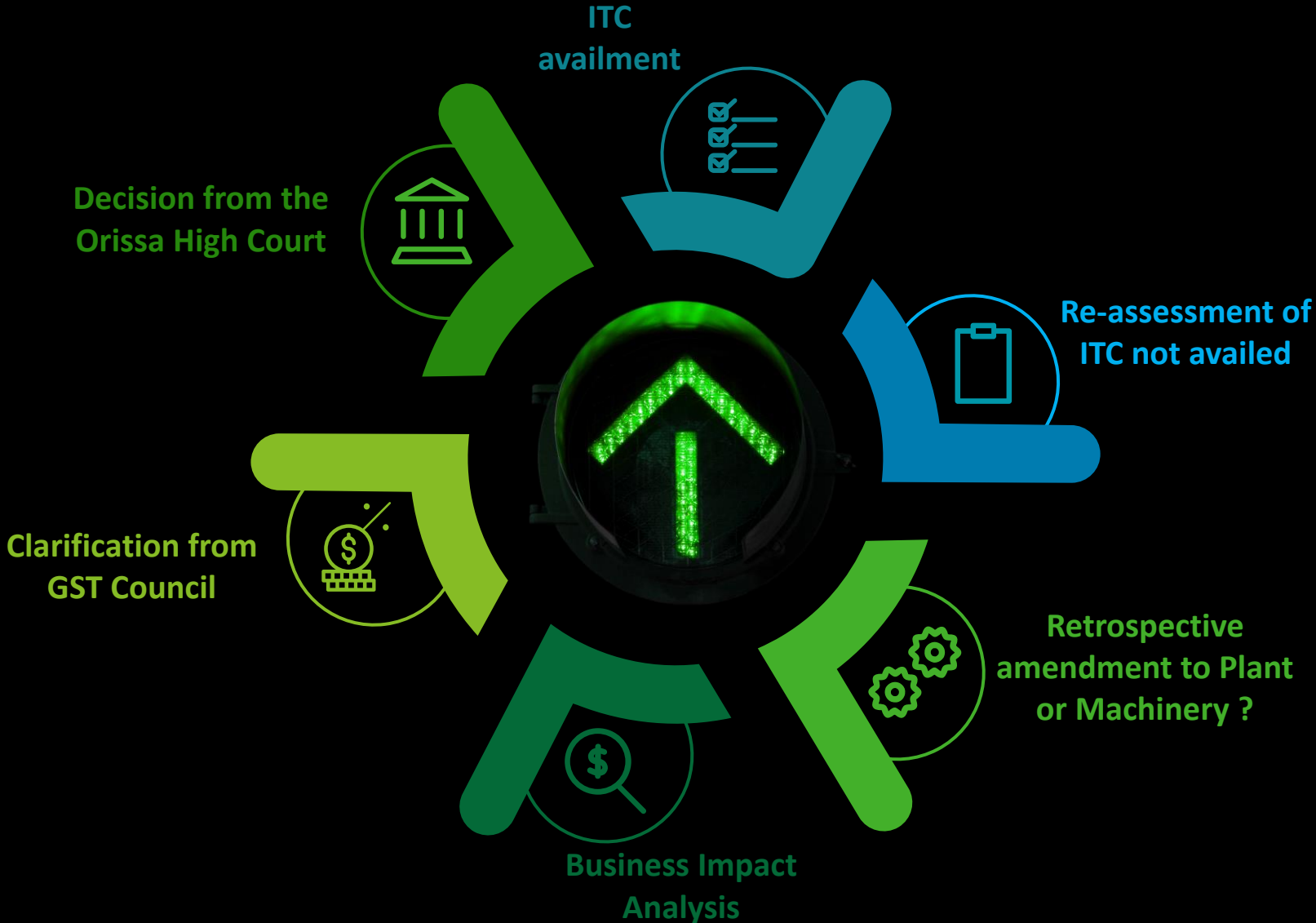


Clarifications – GST Council

- Businesses may seek clarifications from the GST council thus offering more certainty to the businesses

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Practical Considerations and next steps





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