

Karnataka High Court stays demand of Rs.62 Crores to examine validity of provisions restricting ITC on ‘building-construction’

Bagmane Developers vs. Union of India

The petitioner is engaged in providing taxable services such as commercial / industrial construction service, works contract service, repair services and renting of immovable properties. The petitioner has filed returns in GSTR – 3B and GSTR – 1 for the period between July 2017 and April 2019 but without availing input tax credit on goods and services utilized in construction of commercial complexes which are rented after completion. The petitioner has filed GSTR – 3B for the month of May 2019 availing substantial input tax credit prompting the department to issue the impugned notice.

The petitioner has challenged on following grounds:

1. Availing the input tax credit on construction of immovable property

The petitioner has relied on the judgement of Division Bench of the Orissa High Court in ‘Safari Retreats Private Limited v. Chief Commissioner of CGST’ wherein the bench has clarified that if an assessee is required to pay GST on the rental income arising out of an investment on which the assessee pays GST, the assessee would be entitled to corresponding input credit. The department has gone to the Apex court to challenge the decision, but Apex court has not stayed the operation of the decision of the Division bench.

Section 17(5) clause c & d are unreasonable and arbitrary and deny the advantage of input tax credit through continuity of transaction without break in the chain. Section 16 of the CGST Act entitles the registered person to use the input tax credit on any supply of goods or services which are used or intended to be used in the course of business. Section 17(5) clauses c & d create an artificial distinction.

2. Section 16(1) of the CGST Act gives a vested interest and accrued right to avail input tax credit

Section 16(1) gives a substantive right and cannot be abridged by the law of limitation. The law of limitation can only bar a remedy and cannot negate an accrued or a vested right. The time limit to take the credit as mentioned in Section 16(4) of the CGST Act is negating that vested right and is in violation of Article 300A of the Constitution of India.

The case is posted for hearing on 20.11.2020