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News / LATEST / Economy / Construction industry in a tough spot after GST Council decision to overturn SC r...

Feedback

Construction industry in a tough spot after GST Council decision to overturn SC ruling on Safari Retreats Case

Experts say players will have to review position on claiming ITC, may approach courts on retrospective decision

Sivakumar Ramjee, Executive Director–Indirect Tax, Nangia Andersen, noted that the Supreme Court ruling in Safari Retreats case addresses whether immovable property, especially commercial properties like shopping malls intended for leasing or renting, is eligible for the ITC. “Real estate firms were not allowed to claim the Input Tax Credit (ITC) on the GST paid for inputs and input services used in constructing properties for their own use, even if those properties were rented out, according to Section 17(5)(d) of the CGST Act,” he said.

As per the GST Council’s decision, the retrospective amendment would be carried out with effect from July 1, 2017 to amend a “drafting error” in the law.

“To align the provisions of section 17(5)(d) of CGST Act, 2017 with the intent of the said section, the Council has recommended amending section 17(5)(d) of CGST Act, 2017, to replace the phrase ‘plant or machinery’ with ‘plant and machinery’, retrospectively, with effect from 01.07.2017, so that the said phrase may be interpreted as per the Explanation at the end of section 17 of CGST Act, 2017,” said an official release after the meeting.

Sivakumar noted that the proposal of GST council to retrospectively amend Section 17(5) (d) to include the phrase as ‘plant and machinery’ may not be correct as the term ‘plant’ and the term ‘machinery’ are slightly different. “As per the functionality test laid out by Supreme Court, shopping mall could be considered as a ‘plant’ based on several rulings on the direct taxes in the context of depreciation. The government shouldn’t brush it aside by calling it as a drafting error,” he underlined.