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Regulatory 3 Min Read

SC rejects finance ministry's plea against input tax credits for commercial rentals

A Bench led by Justice AS Oka while dismissing the ministry's plea on Tuesday said the government had gone through the review petition and the October 3 judgment, which has been sought to be reviewed, and "there is no error apparent on the record."



ET Bureau

Updated On May 22, 2025 at 09:18 AM IST

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The Supreme Court has rejected the finance ministry's petition seeking a review of its October judgement, which allowed real estate companies to claim input tax credits (ITC) on the construction cost for commercial buildings meant for renting purposes.

A Bench led by Justice AS Oka while dismissing the ministry's plea on Tuesday said that it has gone through the review petition and the October 3 judgment, which has been sought to be reviewed, and "there is no error apparent on the record."

The government wanted the apex court to align with the original legislative intent, after the 55th Goods and Services Tax Council had in December suggested a retrospective amendment to the GST law to correct what it described as a "drafting error" in the legal provisions related to ITC.

paid on inputs and set it off against their GST liability.

This proposed amendment aims to reverse the SC ruling by changing the terminology from “plant or machinery” to “plant and machinery” in Section 17(5)(d) of the Central Goods and Services Tax Act (CGST) Act, 2017.

Saurabh Agarwal, Tax Partner, EY told ET that while the SC judgment on ITC aligns with the industry's logical expectation – that credit should flow seamlessly when output is taxed – the recent retrospective amendment in the last budget unfortunately negates this clarity. “This development, therefore, doesn't bring the anticipated tax certainty. Instead, it's highly probable that after this development industry will now challenge the retrospective amendment made in terms of last budget, prolonging the uncertainty we all hoped to avoid.”

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Earlier the Central Board of Indirect Taxes and Customs chairman Sanjay Kumar Agarwal had also said that there had been a drafting mistake in the law as “the term ‘plant and machinery’ appears at 11 places in the GST Act but in one place, it was incorrectly written as ‘plant or machinery.’ This error is now being corrected with retrospective effect from July 1, 2017.”

In a big relief to the real estate sector, the court had on October 3 last year held that if construction of a building is essential for supplying services like leasing/renting out, it could fall under the ‘plant’ category on which ITC can be claimed under Section 17(5)(d).

This provision essentially prohibited claiming ITC for construction materials (other than plant or machinery) used for immovable property construction.

The apex court ruled that “if the construction of a building is essential for the activity of supplying services like renting or leasing, as outlined in clauses 2 and 5 of Schedule 2 of the CGST Act, the building may be considered a ‘plant’.”

The apex court said that if buildings provided on rent perform the same function as that of a "plant" in a factory which produces economic value and output supply, then ITC on such buildings cannot be denied.

In this case, the Odisha High Court in 2019 had allowed real estate firm Safari Retreats to claim the benefit of ITC on works contract and other goods and services used in the construction of an immovable property, excluding plant and machinery. The HC had ruled that ITC for construction materials under the provision cannot be denied to developers constructing properties for renting out. The revenue department then challenged the HC decision in the SC.



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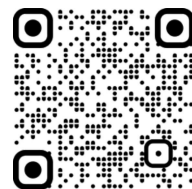
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HC seeks HSVP reply over pond land allocation for private housing in Panchkula

The land of the pond situated in Bhainsa Tibba village in MDC, which was original for public purposes by the govt, was allotted to Softobiz Technologies Private Limited 24.52 crore in June 2024 for construction of multi-crore apartments.



Ajay Sura • TNN

Updated On May 22, 2025 at 09:15 AM IST



CHANDIGARH: The decision of the Haryana Sahari Vikas Pradhikaran (HSVP) to allot a small piece of land, historically used as a pond in Mansa Devi Complex (MDC) Panchkula, to a private builder for a luxury housing project has come under the scanner, with the

Punjab and Haryana high court directing HSVP to file a reply on the issue by Monday.

The land of the pond situated in Bhainsa Tibba village in MDC, which was originally acquired for public purposes by the govt, was allotted to Softobiz Technologies Private Limited for Rs 24.52 crore in June 2024 for construction of multi-crore apartments.

According to the plea, this amounts to a clear case of land-use fraud, asserting that land acquired under the guise of public purpose was diverted for private commercial gain, contravening both the Land Acquisition Act and environmental protection laws.

Th counsel for the petitioner also cited multiple Supreme Court (SC) rulings, emphasising that land acquired for public use cannot be repurposed for private profits. The petition also invokes provisions of the Haryana Pond and Waste Water Act, 2018, which prohibit construction on designated pond land without govt clearance and references the Centre's 'Mission Amrit Sarovar' scheme aimed at rejuvenating water bodies nationwide.

A division bench, comprising Justice Sudhir Singh and Justice Alok Jain, took cognisance of the plea and asked HSVP to file a reply. The matter has reached the HC in the wake of a petition filed by Rajinder Singh, 71, a resident of Bhainsa Tibba village in the MDC area of Panchkula.

The petitioner's counsel highlighted that a previous writ petition (CWP No. 8961 of 2002) on the matter was dismissed by the high court, with the state assuring the court that the pond lost its character and was required for a vital public project. However, no development followed, and on Nov 22, 2022, the Mata Mansa Devi Shrine Board meeting chaired by the chief minister discussed a proposal to sell the land. Later, the possession was transferred to the HSVP in May 2023, which then allotted the plot to Softobiz for Rs 24.52 crore in June 2024, the counsel

informed the court.

The high court was also informed that the land was acquired ostensibly for religious and public welfare projects — namely for a dharamshala, bhandara facilities, and a dispensary — under the aegis of the Shri Mata Mansa Devi Shrine Board.

Advt

The petitioner has sought the quashing of the original notifications regarding the acquisition of the land and the June 28, 2024, allotment letter that transferred around 1.1 acres to a private firm. The HC has been informed that this pond is still reflected in the jamabandi (record of rights) for 2020-21.

Published On May 22, 2025 at 09:14 AM IST

Punjab and Haryana High Court

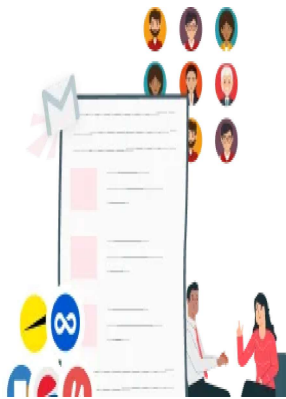
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