



# ***Safari Retreats***

## ***Dissecting the landmark decision of SC***

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## Agenda

- Introduction
- Question of Law before the Hon'ble Apex Court
- Legal provisions
- Key Observations of Hon'ble Apex Court
- Open Questions



## Introduction

- The Hon'ble Supreme Court, in its highly anticipated decision, has addressed the question of law concerning the eligibility of Input Tax Credit (ITC) on construction-related supplies pertaining to immovable property.
- **Relevance** - All manufacturers and service providers who have undertaken any recent construction or proposing any construction related activities.





## Question of Law

- Whether Section 17(5)(c), 17(5)(d) and Section 16(4) of the Central Goods and Services Tax (CGST) Act are constitutionally valid?
- Whether the definition of "plant and machinery" provided in the explanation to Section 17 of the CGST Act extend to the expression "plant or machinery" as used in clause (d) of Section 17(5)?
- If the answer to the above question is affirmative, what meaning must be assigned to plant or machinery.



## Legal Provisions

### Provisions of Section 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :-

(c) **works contract services** when supplied for construction of an immovable property (other than **plant and machinery**) except where it is an input service for further supply of works contract service;

(d) **goods or services or both received** by a taxable person for construction of an immovable property (**other than plant or machinery**) on his own account including when such goods or services or both are used in the course or furtherance of business.





## Legal Provisions (Contd.)

### Provisions of Section 17(5) (contd.)

**Explanation-** For the purposes of this Chapter and Chapter VI, the expression "**plant and machinery**" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

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

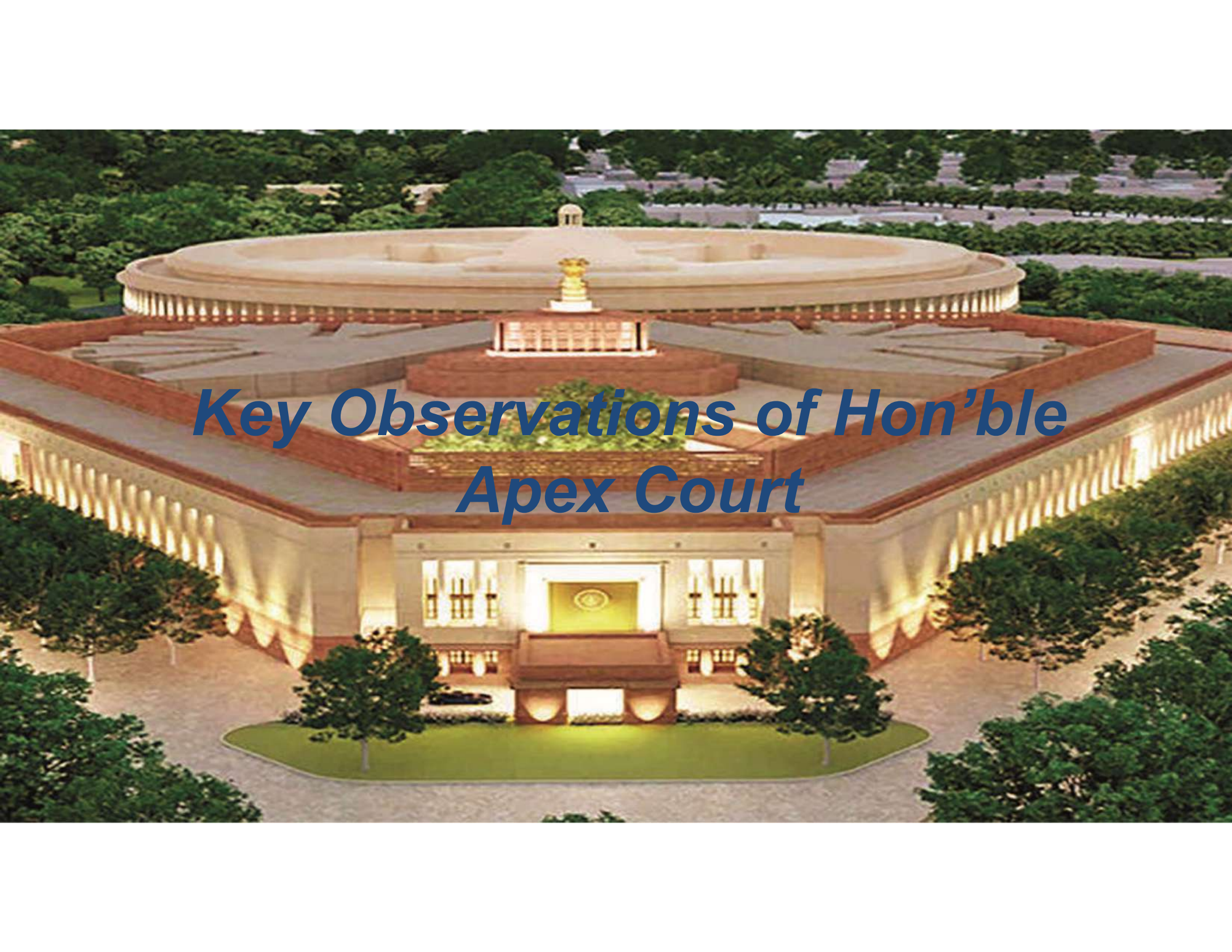
## Legal Provisions (Contd.)

### Provisions of Section 2(119)

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

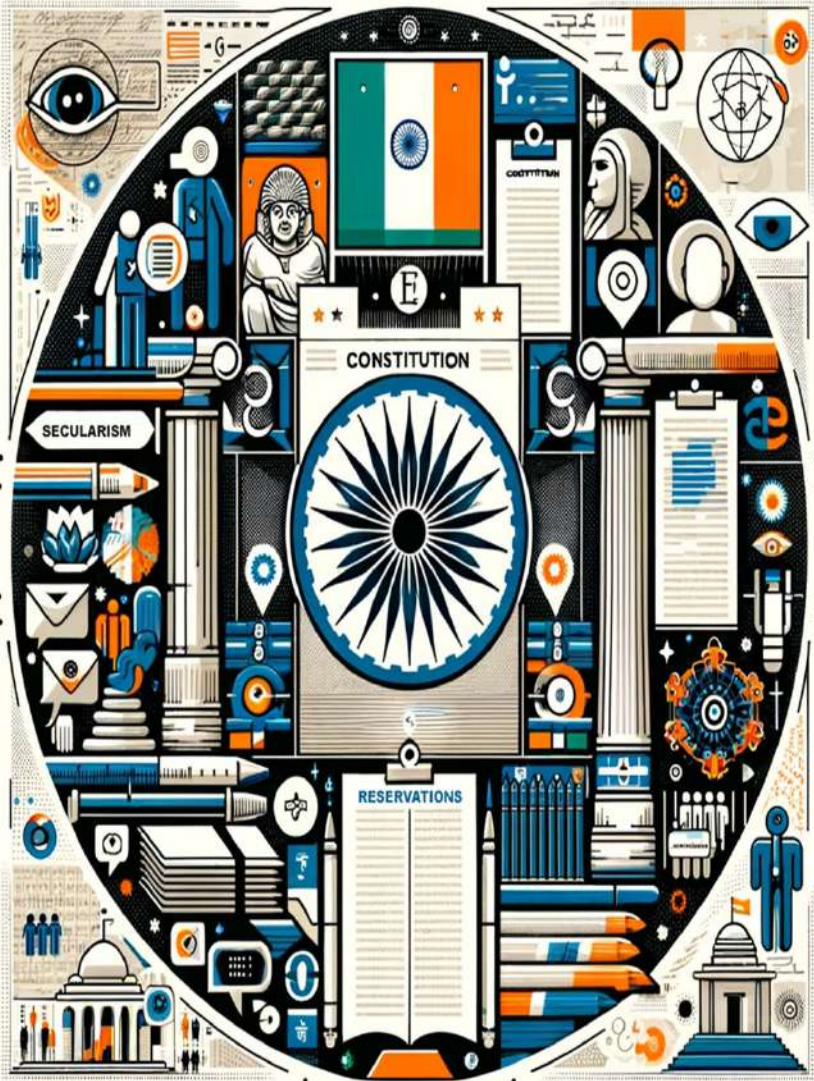






***Key Observations of Hon'ble  
Apex Court***





## Constitutional Validity– Upheld.

- The Hon'ble Apex Court held that the Section 16(4), 17(5)(c) and 17(5)(d) are constitutionally valid and does not infringe Article 14 or Article 19 of the Constitution.
- The Court also observed that the Input tax credit **is a benefit provided by the statute and not a right.** Hence, the legislature can always carve out exceptions for entitlement of ITC.



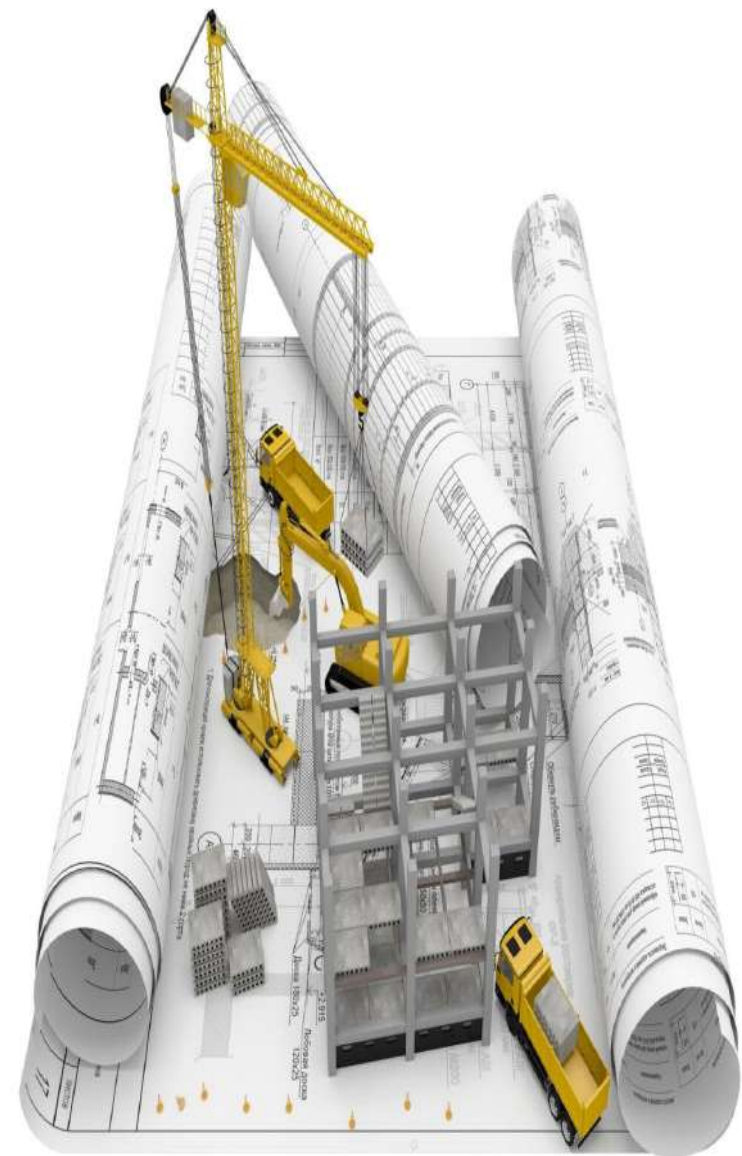
## **Interpretation of Section 17(5)(c)**

- **Ineligibility of ITC for Works Contract Services for Immovable Property Construction:** The Court held that ITC is not available for works contract services supplied for the construction of immovable property, except in specified cases under Section 17(5)(c).
- **Exception for Plant and Machinery:** ITC is available when goods or services are received by a taxable person for constructing “plant and machinery” as defined in the explanation to Section 17.
- **Further Supply Exception:** The second exception to Section 17(5)(c) allows ITC where works contract services are used as an input for further supply of the works contract.



## **Interpretation of Section 17(5)(d)**

- **Exceptions to Clause (d)'s Exclusion of ITC:** Clause (d) permits ITC where goods or services are received for the construction of immovable property comprising “plant or machinery,” or where the construction is not on the taxable person’s own account.
- **Definition of Own Account:** Construction is considered “on own account” if it is for the taxable person’s personal use or as a business premises, **but not if intended for sale, lease, or license.**
- **Broad Definition of Construction:** The explanation to Section 17(5) expands “construction” to include reconstruction, renovation, additions, alterations, or repairs to immovable property, to the extent of capitalisation.





- **Interplay between Clauses (c) and (d):** Hon'ble SC held that clause (d) differs from clause (c), focusing on the exclusion of ITC for goods or services received for construction of immovable property on a taxable person's own account.
- **Meaning of "Plant or Machinery" in Clause (d):**
- **While clause (c) defines "plant and machinery" in the explanation, clause (d) uses the expression "plant or machinery" without a specific statutory definition. The Hon'ble Court has observed that the word "Plant and machinery" has been used at least 10 times in the chapter and the expression "Plant or machinery" has been specifically used in Section 17(5)(d).**





- ❑ "plant or machinery" was not originally part of the Model GST Code but was deliberately added when the legislation was enacted.
- ❑ The inclusion of the phrase was intentional by the legislature.
- ❑ If the use of "plant or machinery" had been an error, the legislature had ample opportunity to rectify it, which has not been done
- ❑ The Hon'ble court held that if the argument that the expression "plant and machinery" and "plant or machinery" are to be construed as same then the intent of legislation would fail.
- ❑ **Hence it was concluded that the words "plant or machinery" cannot be given the meaning of "plant and machinery" as per the Act.**



## *Scope of Plant and Machinery*

- ❑ **What the scope of “plant or machinery” would be** - The Hon’ble Apex Court had provided that when plant is not defined in the Act then the ordinary meaning in commercial terms will have to be attached to it.
- ❑ The Hon’ble Apex court relied on Larger bench M/s Karnataka Power Corporation where in the Hon’ble Apex court has provided that super ceded the earlier decision of M/s Anand Theatres [(2000) 5 SCC 393: (2000) 244 ITR 192].
- ❑ The Hon’ble Apex Court in **M/s Karnataka Power Corporation** stated that if a building is planned and constructed to meet an assessee's specific technical requirements, it qualifies as a plant for investment allowance purposes.

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## **Scope of Plant and Machinery (contd.)**

- ❑ Revenue argument that different meanings given to “plant and Machinery” and “plant or machinery” would result in discrimination, rejected
- ❑ The Hon’ble Apex Court concluded that for interpreting plant or machinery the **“functionality test”** must be applied.
- ❑ If a building is designed to meet an assessee's specific technical requirements, it qualifies as a plant for investment allowance. Consequently, the term “plant” should not be interpreted restrictively under Section 17(5).
- ❑ Hence if a building qualifies as a plant, ITC can be claimed for services related to renting or leasing the building, provided all other conditions of the CGST Act and its rules are fulfilled.

## Key Sectors

<b>Nature of service</b>	<b>Storage /Warehouse/ Malls/Rent ing</b>	<b>Specific building like Airport/port/ Co-working space/Hospitals</b>	<b>Factory building/ Office space</b>	<b>Hotel &amp; Multiplex</b>
Works Contract (Civil)	Highly litigative	Highly litigative	Highly litigative	Not available
Goods (Civil)	Possible to avail	Possible to avail	Arguable	Not available
Services (construction)	Possible to avail	Possible to avail	Arguable	Not available
Plant and Machinery	Available	Available	Available	Eligible





## Open Questions

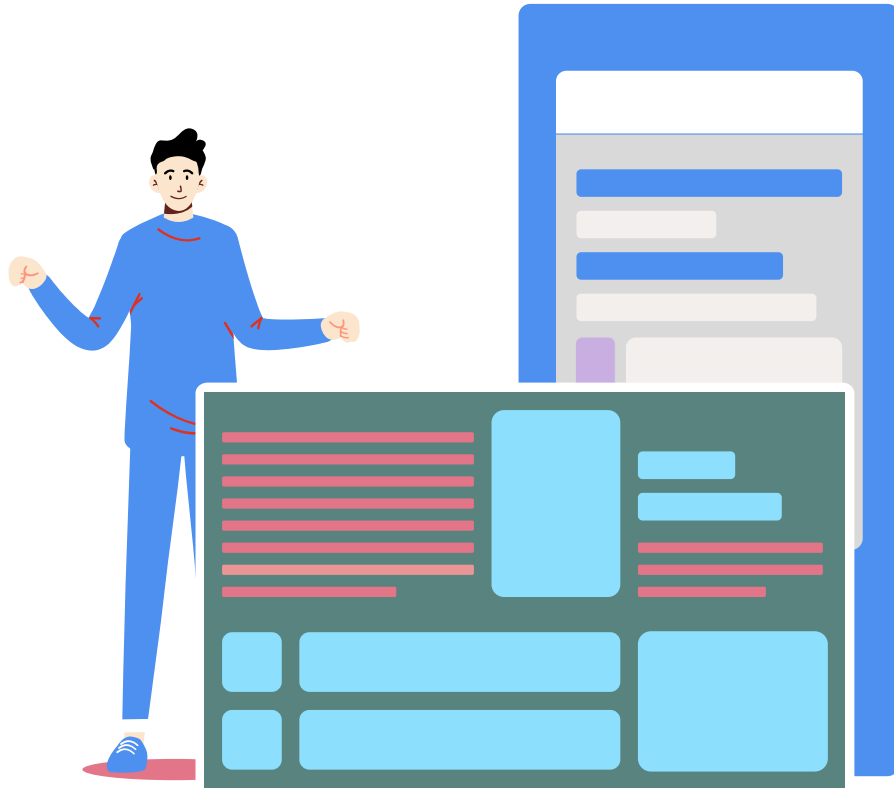
- What is the categorization of Works Contract service vis a vis construction service ?
- Can recipient classify the service at their end ?
- Whether the exclusion in sub-clause (c) on “further supply of works contract” would include cases of exclusion on “own Account” ?
- Whether natural meaning of plant would apply for works contract service ?



## Open Questions

- Whether ITC will be available for factory building, fire plant, solar plant, etc. ?
- Whether refund will be available for ITC already reversed by taxpayers?
- If the Government rectifies the legislature mistake through Amendment, would that amendment lead to retrospective change in position ?
- Whether any clarifications/ circulars will be issued by the Department to clarify what will qualify as 'plant' ?





# *Happy reading!*

**Do you have any questions?**

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