

# IMPORTANT GST UPDATES



Issued in case of SR Constructions by Tripura High Court  
W.P. (C) – 399 of 2022 | Date: 04-04-2023

## Ruling

**Tripura HC ruled that ITC is admissible on construction of hotel building and not restricted by Section 17(5) of CGST Act 2017.**

## Observations & Findings

The petitioner, SR Constructions, a construction company, had a contract with M/s Hotel Polo Pvt. Ltd. to construct a hotel in Agartala, Tripura. During the construction process, they procured materials and services from sub-contractors. The petitioner paid GST on these inward supplies and filed returns, making them eligible for Input Tax Credit (ITC). However, the respondents raised a demand for Input Tax Credit and issued a show cause notice. The petitioner provided explanations, but the orders were passed against them. The petitioner appealed to the appellate authority, but the order was confirmed, leading to their dissatisfaction.

Approaching the Tripura High Court, the petitioner argued that the demand made on the grounds of violating Section 17(5) of CGST by availing Input Tax Credit (ITC) on works contract services for the construction of an immovable property is incorrect. They claim that the respondents cannot collect taxes under the Input Tax Credit, as the credit should be given as per the Act. The Appellate Authority's order lacks reasoning and states that ITC is not applicable to the petitioner for the construction services. According to the observations made, the sub-contractor will levy GST on the tax invoice issued to the main contractor for works contract services. The main contractor can claim ITC based on the tax invoice provided by the sub-contractor. As a result, the petitioner is not eligible to avail ITC for the works contract services related to the construction of the hotel building and amenity block. The respondents seek to deny ITC amounting to Rs. 1,42,33,194, claiming a violation of CGST Act Section 17(5)(c).

The Hon'ble High Court examined the provisions of Section 17 of the CGST Act, specifically Section 17(5)(c), and concluded that the petitioner has fulfilled all the conditions of work contracts for the construction of a hotel building owned by Hotel Polo Pvt. Ltd. As the petitioner is providing work contract services to the owner, they are eligible for Input Tax Credit on goods and services used for these taxable services. The Court determined that the petitioner does not fall within the definition of Section 17(5)(c) of the CGST Act. Therefore, the demand raised and the penalty imposed are invalid, and the appellate authority's order affirming the adjudicating authority's decision is set aside and quashed.