Munjaal Manishbhai Bhatt v. Union of India

Validity of mandatory 1/3rd deemed deduction towards land value under Paragraph 2 of Notification No. 11/2017-Central Tax (Rate) for computing GST on construction services involving transfer of land.

Date of Order: May 6, 2022
Case Law No: GIB-GUJHC-2022-01
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CASE DESCRIPTION / SUMMARY

Background

The writ applicant, a practicing advocate, entered into an agreement dated 29th September 2020 with Navratna Organisers & Developers Pvt. Ltd. for purchase of a plot of land admeasuring 1021 sq. mtrs. at "Kalhar Blues and Greens", Ahmedabad, along with construction of a bungalow thereon. Separate and distinct consideration was fixed for (i) sale of land and (ii) construction of bungalow. The developer, relying on Entry 3(if) of Notification No. 11/2017-Central Tax (Rate) read with Paragraph 2 thereof, demanded GST @ 9% CGST + 9% SGST on the entire consideration (land + construction) after deducting only 1/3rd of total value towards land, instead of deducting the entire actual land consideration. Tax was collected from the petitioner under protest. In the companion writ applications, developers had filed advance ruling applications; the authority held only 1/3rd deduction admissible. Those orders were affirmed by the Appellate Authority for Advance Ruling. All three petitions were heard together, with SCA No. 1350 of 2021 treated as the lead matter.

Court Observations (Verbatim — Crucial Paragraphs)

Para 87:

"Thus the legislative intent is to impose tax on construction activity undertaken by a supplier at the behest of or pursuant to contract with the recipient. There is no intention to impose tax on supply of land in any form and it is for this reason that it is provided in the Schedule III to the GST Acts that the supply of land will be neither supply of goods nor supply of services."

Para 88:

"If the statutory provisions are interpreted from this perspective then the difference sought to be drawn by the learned A.S.G. between developed and undeveloped land pales into insignificance. As such, when the entry in the Schedule III says 'sale of land' then it can be land in any form."

Para 90:

"However, in the present case what is sought to be argued by the revenue is that the exclusion of sale of land will not be available since the land is a developed piece of land. It is difficult for us to accept such argument as at the point of time when the buyer entered into the picture, the land was already developed. Thus, even without going to Schedule III, the only service which is supplied by the supplier to the recipient is the construction undertaken for the buyer and it is such supply alone which can be taxed. Hence the fact that the land is not a plain parcel of land but a developed land cannot be a ground for imposing tax on the sale of such land."

Para 96:

"The answer has to be in the negative. When the statutory provision requires valuation in accordance with the actual price paid and payable for the service and where such actual price is available, then tax has to be imposed on such actual value. Deeming fiction can be applied only where actual value is not ascertainable."

Para 100:

"Thus, mandatory application of deeming fiction of 1/3rd of total agreement value towards land even though the actual value of land is ascertainable is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra-vires the statutory provisions."

Para 105:

"Such deeming fiction which leads to arbitrary and discriminatory consequences could be clearly said to be violative of Article 14 of the Constitution of India which guarantees equality to all and also frowns upon arbitrariness in law."

Para 109:

"Thus, the prescription under Section 15(5) of the CGST Act has to be by rules and not by notification. Be that as it may, wherever a delegated legislation is challenged as being ultra-vires the provisions of the CGST Act as well as violating Article 14 of the Constitution of India, the same cannot be defended merely on the ground that the Government had competence to issue such delegated piece of legislation. Even if it is presumed that the Government had the competence to fix a deemed value for supplies, if the deeming fiction is found to be arbitrary and contrary to the scheme of the statute, then it can be definitely held to be ultra-vires."

Para 122:

"In the result, the impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which

provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India."

Para 123–124:

"While we so conclude, the question is whether the impugned paragraph 2 needs to be struck down or the same can be saved by reading it down. In our considered view, while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable. The impugned paragraph 2 of Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable."

Final Verdict

Paragraph 2 of Notification No. 11/2017-Central Tax (Rate) read down — mandatory 1/3rd deemed deduction for land value held ultra-vires and violative of Article 14; it shall operate only as an option for the taxable person where actual land value is not ascertainable. Refund of excess tax directed to petitioner with 6% interest within 12 weeks. Advance ruling appellate orders in companion petitions quashed.

ADDITIONAL FOOTNOTES

Citations Referred by the Court

1. State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.
2. Gannon Dunkerley and Co. v. State of Rajasthan
3. K. Raheja Development Corporation v. State of Karnataka
4. Larsen and Toubro Ltd. v. State of Karnataka
5. Commissioner, Central Excise and Customs, Kerala v. Larsen and Toubro Ltd.
6. Suresh Kumar Bansal v. Union of India
7. Wipro Ltd. v. Assistant Collector of Customs and Others
8. Commissioner of Central Excise, Pondicherry v. Acer India Ltd.
9. Commissioner of Central Excise, Indore v. Grasim Industries Ltd.

10. State of Rajasthan v. Rajasthan Chemists Association
11. Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India
12. Kerala Financial Corporation v. Commissioner of Income Tax
13. ITW Signode India Ltd. v. Collector of Central Excise
14. Deputy Commercial Tax Officer v. Sha Sukraj Peerajee
15. State of Kerala v. Builders Association of India
16. Mycon Construction Ltd. v. State of Karnataka
17. Mangalore Ganesh Beedi Works v. Commissioner of Income Tax
18. Commissioner of Income Tax, Hyderabad v. Motor and General Stores (P) Ltd.
19. Arun Kumar and Others v. Union of India
20. Union of India v. Nitdip Textile Processors Pvt. Ltd.
21. Anant Mills Co. Ltd. v. State of Gujarat
22. Union of India v. VKC Footsteps India Pvt. Ltd.
23. Spences Hotel Pvt. Ltd. v. State of West Bengal
24. Khyerbari Tea Co. Ltd. v. State of Assam
25. Narne Construction P. Ltd. v. Union of India
26. Govind Saran Ganga Saran v. CST
27. Mafatlal Industries Ltd. v. Union of India
28. Garden Silk Mills Ltd. v. Union of India

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