

Munjaal Manishbhai Bhatt v. Union of India

GST on Land Value in Construction Contracts

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

The Core Issue

The matter arose from a booking agreement entered into by the petitioner, a practicing advocate, with a developer for purchase of a plot of land admeasuring 1021 sq. mtrs. along with construction of a bungalow thereon. Crucially, the agreement separately and distinctly quantified the consideration for land and for construction. The developer, however, levied GST on the entire composite consideration after deducting only 1/3rd of the total amount as the deemed value of land, relying on Paragraph 2 of Notification No. 11/2017-Central Tax (Rate). The petitioner challenged this on the ground that since land is explicitly excluded from the definition of "supply" under Schedule III to the GST Acts, the entire consideration towards land ought to be excluded from the GST base, and not merely a fixed 1/3rd thereof. The constitutional validity of the impugned notification was thus squarely put in issue before the High Court.

Court Observations

The Court held that [Section 15\(1\)](#) of the CGST Act mandates that the value of supply shall be the **transaction value — the price actually paid or payable**. Deeming fiction can only operate as a fallback where the actual value is not ascertainable. In the petitioner's case, the agreement specifically and separately stated the consideration for land and for construction, and the respondents did not even challenge this bifurcation in their affidavit in reply. In this context, the Court made its most critical observation:

"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."

Rather than striking down Paragraph 2 entirely, the Court read it down to preserve its utility for cases where actual land value is genuinely not ascertainable. The Court ordered that the mandatory fixed deduction of 1/3rd shall not be compulsory — it shall 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 otherwise ascertainable. Where the agreement separately and clearly stipulates the land value, GST must be computed only on the actual construction consideration. The petitioner was directed to be refunded the excess tax collected, along with statutory interest at 6% per annum, within 12 weeks.

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