Builders Association of Navi Mumbai v. Union of India

Levy of GST @ 18% on one-time lease premium charged by CIDCO on long-term (60-year) lease of plots to builders/developers in Navi Mumbai.

Date of Order: March 28, 2018
Case Law No: GIB-BHC-2018-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

CIDCO (City Industrial and Development Corporation of Maharashtra Ltd.), incorporated on 17th March 1970, is designated as the New Town Development Authority under Section 113(3A) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). In furtherance of its planning mandate, CIDCO allots residential-cum-commercial and hotel plots on 60-year leases through a tender process. Successful bidders pay a one-time lease premium (lump sum) plus annual lease rent. In April 2017, upon issuance of allotment letters, CIDCO demanded GST @ 18% on the total one-time lease premium via Demand Draft. Petitioners — an association of builders and a partnership firm — challenged this levy before the Bombay High Court after the GST Commissionerate failed to respond to their grievance correspondence.

Court Observations (Verbatim)

"*A perusal of sections 7, 8, 9, 10 and 11 falling in this Chapter leaves us in no manner of doubt that the expression 'supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.*"

"*Once this law, in terms of the substantive provisions and the Schedule, treats the activity as supply of goods or supply of services, particularly in relation to land and building and includes a lease, then, the consideration therefor as a premium/one-time premium is a measure on which the tax is levied, assessed and recovered. We cannot then probe into the legislation any further.*"

"*It is entirely for the legislature, therefore, to exercise the powers conferred by sub-section (2) of section 7 of the GST Act and issue the requisite notification. Absent that notification, merely going by the status of the CIDCO, we cannot hold that the lease premium would not attract or invite the*

liability to pay tax in terms of the GST Act."

"*With respect, it cannot be said that the activities performed by sovereign or public authorities under the provisions of law, which are in the nature of statutory obligations are excluded from the purview of the present enactment.*"

"*Pertinently, the dividing line between governmental and non-governmental, sovereign and regal functions and otherwise is not very thin and post globalisation, liberalisation and privatisation.*"

Final Verdict

The demand for GST on the one-time lease premium is held to be in accordance with law. The writ petition is **dismissed** and Rule is discharged. No order as to costs.

ADDITIONAL FOOTNOTES

Citations Referred by the Court

#	Case Name	Citation
1	Commissioner of Income Tax, Assam, Tripura & Manipur v. Panbari Tea Co. Ltd.	AIR 1965 SC 1871
2	R. K. Palshikar (HUF) v. Commissioner of Income Tax, M.P., Nagpur	(1988) 3 SCC 594
3	Commissioner of Central Excise, Nashik v. Maharashtra Industrial Development Corporation	Central Excise Appeal No. 164 of 2015 (Bombay HC, decided 23.08.2017)
4	Greater Noida Industrial Dev. Authority v. Commissioner of Customs, Central Excise	2015 (40) STR 95
5	Shri Ramtanu Co-operative Housing Society Ltd. & Anr. v. State of Maharashtra & Ors.	1970 SCC 323
6	N. Nagendra Rao and Co. v. State of Andhra Pradesh	

of SLP and is pending final adjudication.

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