Gujarat Chamber of Commerce & Industry v. Union of India

Whether assignment/sale/transfer of leasehold rights in a GIDC-allotted industrial plot (along with the building constructed thereon) by the lessee/assignor to a third party/assignee for lump-sum consideration constitutes

Date of Order: January 3, 2025
Case Law No: GIB-GUJHC-2025-44
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Gujarat Industrial Development Corporation (GIDC), a nodal agency of the Government of Gujarat, acquires and develops industrial estates and allots plots of land on long-term lease of 99 years to industrial entities, initially by a licensing agreement and subsequently by a registered lease deed, on payment of premium and periodic lease rent. The lease deed permits the lessee to assign leasehold rights to a third party with GIDC's approval. After implementation of GST, the department issued summons and show cause notices to members of the Gujarat Chamber of Commerce and Industry who had assigned their leasehold rights along with buildings constructed thereon on the GIDC plots to third party assignees for lump-sum consideration, demanding GST at 18% by treating such assignment as "supply of service" under the CGST/SGST Act, 2017. The petitioner Chamber made representations contending that such assignment is a transfer of immovable property excluded from GST under Entry 5 of Schedule III, and alternatively, that ITC would be admissible if GST is levied. Since representations were not considered, a batch of 60+ writ petitions were filed, with SCA No. 11345 of 2023 treated as the lead matter.

Court Observations (Verbatim)

"*When such leasehold right is transferred by the lessee-assignor in favour of a third person-assignee by execution of deed of assignment, it would be nothing but transfer of an 'immovable property' in view of the settled legal position to the effect that lease for 99 years or for a long term in consideration of premium paid is as much an alienation as sale or mortgage.*"

"*Interest in the immovable property in form of leasehold rights cannot be said to be different than the immovable property itself.*"

"*Leasehold rights which are to be considered as sale of land would be out of purview of the provisions of scope of supply as per section 7 of the GST Act.*"

"*The scope of 'supply of services' would not include transfer of leasehold rights as supply of service as it would be transfer of 'immovable property' being a benefit arising out of immovable property consisting of land and building.*"

"*Clause 5 of Schedule III of the GST Act clearly provides that sale of land cannot be treated as supply of goods or services. Therefore, leasehold rights which are to be considered as sale of land would be out of purview of the provisions of scope of supply as per section 7 of the GST Act.*"

"*Under the Service Tax Act, even the development rights which are the benefits arising from land were not liable to tax. Leasehold right is in fact a greater right and interest in land than development rights and the principle under the service tax regime would therefore, continue even to apply under the GST regime as the object of introduction of GST is to subsume the existing taxes.*"

"*When the lessee/assignor transfers the land having leasehold rights and building to the assignee, same cannot be considered as supply of service as it would be a transfer of immovable property. Therefore…assignment of leasehold rights equal to the renting of immovable property as per clause 5(b) of the Schedule II would be contrary to such legislative intent.*"

"*When the legislature in its wisdom has chosen to exclude the sale of land and building from purview of GST Act, there is no ambiguity that section 7(1)(a) would be applicable to the sale of immovable property and once it is held that assignment of the leasehold rights being the benefit/interest arising out of immovable property would partake the character as such, cannot be covered under the scope of supply of services by any stretch of imagination.*"

"*Transfer charges paid by the assignee would be subject to levy of GST but at the same time consideration paid by the assignee to the lessee/assignor would amount to transfer of immovable property which would be out of purview of provision of section 7(1)(a) of the GST Act read with Schedule II and Schedule III thereof.*"

Final Verdict

Assignment/sale/transfer of leasehold rights of GIDC-allotted industrial plot along with building by lessee/assignor to third party/assignee for consideration is a transfer of immovable property covered under Clause 5 of Schedule III of the GST Act and not a "supply of service" — hence not liable to GST. All impugned show cause notices and orders/appeals were quashed and set aside. Rule made absolute. Stay of operation of the judgment was also rejected by the Court.

ADDITIONAL FOOTNOTES

Case Laws / Citations Relied upon by the Court

Case	Citation	Relevance
Gopal Saran vs. Satya Narayana	(1989) 3 SCC 56	Definition of 'assignment' — transfer of whole property/interest including leasehold rights
Byramjee Jeejeebhoy (P) Ltd. vs. State of Maharashtra	AIR 1965 SC 590	What a lease contemplates; assignment conveys the whole interest in the property
Sri Tarkeshwar Sio Thakur Jiu vs. Dar Dess Dey Co.	(1979) 3 SCC 106	Scope of 'lease' under Sections 105 and 108 TPA; immovable property includes benefits arising out of land
Anand Behera vs. State of Orissa	AIR 1956 SC 17	Profit a prendre is immovable property; benefit arising out of land is immovable property
Narinder S. Chadha vs. Municipal Corporation of Greater Mumbai	(2014) 15 SCC 689	'Sale' and 'service' are not interchangeable
Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi	(1978) 4 SCC 36	Distinction between sale of goods and supply of services
T.N. Kalyana Mandapam Assn. vs. Union of India	(2004) 5 SCC 632	Service tax on mandap services — distinguished on facts
Commissioner of Income Tax, Bangalore vs. Venkateswara Hatcheries (P) Ltd.	(1999) 3 SCC 632	Principle that same word can have different meaning in different contexts
Hotel & Restaurant Assn. and another vs. Star India (P) Ltd.	(2006) 13 SCC 753	Hazardous to interpret a word from definition in another statute
P. Kasilingam vs. P.S.G. College of Technology	1995 Supp (2) SCC 348	Definition of 'supply' as an exhaustive definition
Munjaal Manishbhai Bhatt vs. Union of India	(2022) 104 GSTR 419 (Guj)	Gujarat HC — intention of GST regime not to tax transfer of land in any form
Residents Welfare Association, Noida	Referenced in judgment	Assignment deed — not outright sale — stamp duty context — distinguished
CIT Madras vs. Kasturi and Sons	(1999) 3 SCC 346	Principle of strict construction of taxing statutes
A.V. Fernandez vs. State of Kerala	AIR 1957 SC 657	Interpretation of fiscal statutes — strict letter of law to be followed
P. Kishore Kumar vs. Vittal K. Patkar	2023 SCC OnLine SC 1483	Nemo dat quod non habet — vendor cannot transfer better title than he possesses
Remarkable Industries Pvt. Ltd.	2023 SCC OnLine UP AAR-GST 14	UP AAR ruling on subleasing — distinguished and not applied

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