Prahitha Construction — GST on Transfer of Development Rights under JDA

Whether transfer of Development Rights (TDR) by a landowner to a developer under a Joint Development Agreement (JDA) amounts to sale of land exempt under Entry 5 of Schedule III of the CGST Act, 2017, or constitutes a taxable supply of service under GST

Date of Order: February 9, 2024
Case Law No: GIB-TELHC-2024-10
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Prahitha Construction Pvt. Ltd., a commercial real estate developer, entered into a JDA dated 28.12.2017 with two landowners — M/s. Jitvan Land Limited and M/s. Janina Marine Properties Pvt. Ltd. — for development of land admeasuring 8.30 acres and 1.82 acres at Hyderabad Knowledge City, Raidurg Village, Serilingampally Mandal, Ranga Reddy District, Telangana into an IT/ITES and commercial office project. Under the JDA, the landowners granted permissive possession to the developer, who agreed to construct three towers. The developer was to receive the Developer's Undivided Share (UDS) of land and the built-up area as consideration, but only after handing over the Landowner's Share upon project completion. The JDA expressly stated that permissive possession shall not be construed as delivery of possession in part performance under Section 53-A of the Transfer of Property Act, 1882. The petitioner challenged Notification No. 4/2018 as amended by Notification No. 23/2019-CT(Rate) dated 30.09.2019, which imposed GST on transfer of development rights under a JDA, seeking its declaration as ultra vires Articles 14, 246A and 265 of the Constitution and the CGST/TGST Act, 2017.

Court Observations (Verbatim)

"*Reading of the aforesaid clause further gives a clear picture of the fact that mere execution of JDA by itself would not mean that the right, title and ownership of the property or a portion of that property stands transferred in the name of the petitioner/developer. There are certain conditions/milestones/stages which have to be crossed before which the petitioner would be entitled to have a certain element of right over the completed constructed area which has been agreed to be left at the disposal of the petitioner. But that does not mean that mere execution of the JDA would*

amount to transfer of right to the petitioner."

"The transfer of development rights is hence a service under GST Law which the landowner is offering to the developer and that too for a consideration. Thus, the transfer of development rights is a service and not an outright sale of an immovable property."

"From plain reading of the JDA that was entered into between the two parties, what is apparently visible is that, there was no outright sale of land being effectuated and the JDA per se cannot be considered merely as a medium adopted by the landowner selling his land and the JDA does not lead to sale of land by itself."

"The transfer of ownership from the landowner goes directly to the purchaser of the constructed property and not in favour of the petitioner unless and until the land stands transferred in the name of the petitioner. The same cannot be brought within the ambit of sale. Transferring of the development rights does not result in transfer of ownership rights. That the sale of land/transfer of land or undivided share of land would get executed only after issuance of completion certificate of the project. This itself would give a clear indication that the services rendered by the petitioner in execution of JDA was supplied prior to the issuance of completion certificate and would thus be amenable to GST."

"On conjoint reading of the clauses under JDA, clause d of the JDA along with clause 2.2, 2.3, 2.4, 6.1, 6.7 and 23.4...it will clearly indicate that there is no automatic transfer of ownership given to the petitioner at the time of execution of the JDA...In the absence of any cogent and substantial material to establish right, title and ownership being created in favour of the petitioner/developer, the transfer of development rights as it stands is amenable to GST and cannot be brought within the purview of Entry 5 of Schedule-III of the GST Act."

"The Notification No. 4 of 2018 dated 25.01.2018 as amended by Notification No. 23/2019-Central Tax (Rate), dated 30.09.2019, on its plain reading would reveal that it is not with which there is a charge created on the transfer of development rights, but in fact only provide for the time when the tax need to be paid."

"Taking into consideration the provisions of Article 246A of the Constitution of India and also considering the extraordinary powers which have been conferred upon the GST Council and upon whose recommendation the Government has issued the notification clarifying the aspect of transfer of development rights being attracted to GST/TGST, the challenge to the notification issued by the Government of India can be safely held to be devoid of merits."

Final Verdict

The Writ Petition was dismissed. The Court held that transfer of development rights under a JDA is a taxable supply of service under GST and does not amount to sale of land under Entry 5 of Schedule

III of the CGST Act. The impugned Notification No. 23/2019-CT(Rate) dated 30.09.2019 was upheld as valid.

ADDITIONAL FOOTNOTES

Case Laws Cited by the Court

Case Name	Court	Date of Order
Commissioner of Income Tax v. Balbir Singh Maini	Supreme Court of India	4 October 2017
Super Poly Fabriks Ltd. v. Commissioner of Central Excise, Punjab	Supreme Court of India	24 April 2008
Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur	Supreme Court of India	12 February 2013
Bhopal Sugar Industries Ltd. v. Sales Tax Officer, Bhopal	Supreme Court of India	14 April 1977
Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.	Supreme Court of India	28 January 2016
DLF Universal Ltd. v. Director, Town & Country Planning Department, Haryana	Supreme Court of India	19 November 2010
Safiya Bee v. Mohd. Vajahath Hussain @ Fasi	Supreme Court of India	16 December 2010
Pradeep Oil Corporation v. Municipal Corporation of Delhi	Supreme Court of India	6 April 2011
Sadoday Builders Pvt. Ltd. v. Joint Charity Commissioner	Bombay High Court, Nagpur Bench	23 June 2011
Jindal Stainless Ltd. v. Union of India	Delhi High Court	Not verified
State of Tamil Nadu v. P. Krishnamurthy	Supreme Court of India	24 March 2006
Commissioner of Income Tax v. B.C. Srinivasa Setty	Supreme Court of India	19 March 1981
Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd.	Supreme Court of India	20 August 2015
Natural Resources Allocation, In Re: Special Reference No. 1 of 2012	Supreme Court of India	27 September 2012
S.G. Jaisinghani v. Union of India	Supreme Court of India	22 February 1967
Sri Patrick Bernardinz D'Sa	Authority for Advance Ruling, Karnataka	25 October 2018

GST INDIA BIZ

© 2026 GST INDIA Biz. All rights reserved.

GST INDIA BIZ