

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1257 OF 2026

M/s. Hindustan Equipment Craft,
through its Proprietor Mr. Chandrashekhar s/o Keshavrao Joshi,
R/o ½, Flat No. 201, Om Apartment, Near Baljagat,
Laxmi Nagar, Nagpur - 440022.

...PETITIONER

Versus

1] Assistant Commissioner of State Tax,
(Lakadganj_601), 2nd Floor, New Building,
State GST Bhawan, Civil Lines,
Nagpur, Maharashtra - 440001.

2] State of Maharashtra,
through The Commissioner of State Tax,
E-1, E-Wing, 8th Floor, GST Bhawan,
Mazgaon, Mumbai, Maharashtra - 440010.

...RESPONDENTS

Mr. Vijaykumar Paliwal, Counsel for the petitioner.
Mr. S.S. Hulke, A.G.P. for the respondents/State.

CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.

DATE : 27/2/2026

ORAL JUDGMENT (PER : ANIL L. PANSARE, J.) :

Heard.

2] Issue Rule returnable forthwith. The learned A.G.P. waives service of Rule on behalf of the respondents. With consent of the learned Counsel for the petitioner and the learned A.G.P, the petition is taken up for final hearing. 3] The challenge is to the impugned order dated 30/12/2025 passed by respondent no.1 arising out of show cause notice dated 22/9/2025 issued by respondent No.1 calling upon the petitioner to show cause as to why Goods and Services Tax (GST) should not be demanded and recovered from the petitioner under sub-section (5) of Section 73 of the Maharashtra Goods and Services Tax Act, 2017 (for short, "Act of 2017") towards non payment of GST on transfer of leasehold rights.

4] The notice has been issued under Section 75 of the Act of 2017 on the ground that the petitioner has concealed a transaction, where he has assigned his leasehold rights in a plot belonging to MIDC to one Mr. Kishor Kothari s/o Mr. Manoharlal Kothari, partner in M/s. Kothari Belting Company, for Rs.1,15,00,000/-. As such, it is undisputed that the leasehold rights have been assigned with consent of MIDC Hingna, Nagpur, and that the petitioner has paid an amount of Rs.2,33,500/- by way of an additional premium. 5] According to the respondents, this transfer of assignment of rights would amount to supply of services in terms of Section 7(1) read with sub-clause (b) of Clause 2 of Schedule II of the Act of 2017. For the purpose of ready reference, we reproduce relevant parts of Section 7 and Clause 2(b) of Schedule II.

"7. Scope of supply.

(1) For the purposes of this Act, the expression - "supply"

includes -

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (aa)

(b) to (d)

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.] (2) and (3)

SCHEDULE II [See section 7] ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

(a) to (c)

(a) any lease, tenancy, easement, licence to occupy land is a supply of services:

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."

6] As could be seen, sub-clause (b) of Clause 2 of Schedule II indicates any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

7] In the case before us, the transaction under question is assignment of leasehold rights by the petitioner in favour of assignee - M/s. Kothari Belting Company, which, admittedly, is not a lease nor does it amount to sub-lease. In fact, in the show cause notice issued by respondent no.1, he has categorically mentioned that the transaction under question does not amount to sub-lease, as the petitioner's right stands extinguished by the said transaction. Respondent no.1 has recognized this transaction as seeking compensation to transfer rights in favour of the assignee. According to respondent no.1, this activity amounts to service classifiable under other miscellaneous services, and is taxable at 18% under Sr. No. 35 of the Notification No. 11/2017 CT (Rate) dated 28/6/2017.

8] Our attention is invited to the entry at Sr. No. 1, which includes other services (washing, cleaning and dyeing services; beauty and physical well-being services, and other miscellaneous services, including services nowhere else classified). As could be seen, the services include miscellaneous services like washing, cleaning, dyeing, beauty, physical well- being, etc. Such petty services, in our view, cannot be extended to assignment of leasehold rights in an immovable property, to term it to be other miscellaneous services, as classified under Clause at Sr. No. 35 of the Notification.

9] In that view of the matter, the notice could be said to be bad in law on this count alone. We, however, find it necessary to consider whether the assignment of leasehold rights would amount to supply of service. Admittedly, the petitioner holds lease for 95 years. Thus, it is a long term lease, and in that sense, is a leasehold ownership property. The rights under the lease are transferable in terms of Clause 2(u) of the lease executed between MIDC and the petitioner. Thus, the rights are transferable. Accordingly, the petitioner has transferred the rights to M/s. Kothari Belting Company with prior consent of MIDC.

10] This transaction, on the face of record, constitute transfer of immovable property by the petitioner to M/s. Kothari Belting Company. The transaction pertains exclusively to transfer of benefits arising out of an immovable property and has no nexus whatsoever with the business of the petitioner Company. Consequently, the essential element of supply of service, in the course of business or in furtherance of business, is completely absent. On this point, a profitable reference could be had to a judgment of the Gujarat High Court in the case of Gujarat Chamber of Commerce and Industry Vs. Union of India [(2025) 170 taxmann.com 251 (Gujarat)] , wherein, an identical issue was considered, which finds place in paragraph 27, which reads as under :

"27. Therefore, moot question which arises for consideration is whether assignment of the leasehold rights of the land along with the building thereon would be covered by the scope of supply so as to levy GST as per the provisions of section 9 of the GST Act or not?"

Thus, the question before the Gujarat High Court was, whether assignment of the leasehold rights of the land, along with the building thereon, would be covered by the scope of supply, so as to levy GST as per the provisions of Section 9 of the GST Act.

11] In the case before the Gujarat High Court, the lease was executed by GIDC, whereas, in the case before us, it is executed by MIDC. In the present case also, the petitioner has constructed factory building on the land allotted to it, and has assigned the rights of the land, along with building standing thereon. The Gujarat High Court considered provisions of the GST Act with Schedule II and held thus;

"31. The functions and powers of the GIDC are prescribed under Chapter III of the GIDC Act for growth and development of industries in the State of Gujarat by establishing and managing the industrial estate and develop such industrial area.

32. Sub-clause (a) of section 14 of the GIDC Act empowers the GIDC to acquire and hold such property, both movable and immovable as may be necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation. In exercise of such powers, GIDC enters into lease agreement of 99 years for allotment of land for industrial purpose in the industrial estate developed by it.

33. The ownership of the plot of land allotted by GIDC remains with it and only the right of possession and occupation are transferred by way of leasehold rights in favour of allottee lessee.

34. Schedule-II of the GST Act provides for activities or transactions to be treated either as supply of goods or supply of services. As per clause 5(a) of Schedule II renting of immovable property is to be treated as supply of services. Therefore, allotment of land which is undisputedly an immovable property on lease would be covered by clause 5(a) of the Schedule II of the GST Act and therefore, the same would be covered by the scope of supply of services liable to levy of tax under the provisions of section 9 of the GST Act.

35. However, by Notification no.12/2017-Central Tax (Rate) dated 28.06.2017 issued in exercise of powers conferred by sub- section (1) of section 11 of the GST Act, on recommendations of the GST Council, levy of tax under sub- section(1) of section 9 of the GST Act on intra-State supply of services mentioned therein has been exempted. At Serial No.41 of the said notification, under Chapter Heading 9972, Nil rate is

prescribed for one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (30 years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.

36. Therefore, even if the assignment of leasehold rights on the land on charge of one time upfront amount by the GIDC for allotment of plot of land to the industrial unit is covered within the scope of "supply of services" as per clause 5(a) of the Schedule II read with section 7(1) of the GST Act, charging of one time upfront amount as premium by the GIDC would attract Nil rate of tax as per the aforesaid notification. Therefore, when the industrial unit is allotted land by the GIDC, no GST is required to be paid under the provisions of GST Act as per entry no. 41 of Notification No. 12/2017.

37. As per the lease deed executed by GIDC in favour of industrial unit for allotment of plot of land, the industrial unit is entitled to transfer such leasehold land in favour of any third party with the prior permission of the GIDC on payment of transfer charges as prescribed by GIDC.

However, such transfer fee would be subject to levy of GST at the rate of 18% under the GST Act as it would amount to supply of services by GIDC giving permission to transfer the leasehold rights by the industrial unit in favour of a third party who will become the lessee-assignee in place of the original allottee-assignor of the plot by the GIDC. Deed of assignment of leasehold rights which is executed by the lessee- assignor in favour of the third party is also subjected to levy of stamp duty under the provisions Gujarat Stamp Act, 1958 as well as it is compulsorily required to be registered under the provisions of the Registration Act, 1908.

38. Hence the contention on behalf of the petitioner that transfer/assignment of the leasehold rights is nothing but a sale and transfer of benefits arising out of immovable property i.e. plot of land which cannot be considered as supply of services because sale, transfer and exchange of benefit arising out of immovable property is nothing but sale, transfer and exchange of the immovable property itself and, therefore, such transactions would not be subject to levy of tax under the provisions of GST Act as same cannot be covered within the scope of supply as per section 7 of the GST Act is required to be considered by analyzing various provisions of the GST Act vis-a-vis provisions of different Acts as to what is an "immovable property" and whether leasehold rights can be said to be benefits arising out of such immovable property."

12] The Gujarat High Court, thereafter, considered various provisions of the General Clauses Act, 1987, Transfer of Property Act, 1882, Registration Act, 1908, and other such provisions, and rendered the following conclusion :

"83. In view of foregoing reasons, assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for

a consideration shall be assignment/sale/transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee- lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and uilding and same would not be subject to levy of GST as provided under section 9 of the GST Act."

13] Thus, the Gujarat High Court held that assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/transfer of benefits arising out of "immovable property" by the lessee- assignor in favour of third party, assignee who would become lessee of GIDC in place of original allottee-lessee, and in such circumstances, would not be subject to levy of GST in terms of provisions of the GST Act. We subscribe to this view for the reasons quoted in earlier part of our judgment so also because the view, in our considered opinion, is in consonance with the provisions of law on supply of services.

14] Further, the law laid down by the Gujarat High Court is binding on the authorities, i.e. the respondents in terms of the judgment of this Court in the case of Commissioner of Income-tax, Vidarbha and Marathwada, Nagpur Vs. Smt. Godavaridevi Saraf Tumsar [1978 (2) ELTJ 624 Bombay], wherein, the Court held that until a contrary decision is given by any other competent High Court, which is binding on Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of land. In that sense, the decision of the Gujarat High Court is binding on the authorities below. Further, we subscribe to the finding of the Gujarat High Court that the assignment by sale and transfer of leasehold rights of the plot of land allotted by the Corporation, like GIDC or MIDC to the lessee in favour of third party-assignee for a consideration, shall be assignment/sale/transfer of benefits arising out of immovable property by the lessee-assignor in favour of third party, and in such circumstances, the transaction would not be subject to levy of GST in terms of the GST Act.

15] The Writ Petition is, accordingly, allowed. Order dated 30/12/2025 passed by respondent no.1 in Ref. No. ZD2712251652892 is quashed and set aside. 16] Rule is made absolute in aforesaid terms. No costs.

Sumit

JUDGE

JUDGE

Signed by: Mr. Sumit Agrawal
Designation: PS To Honourable Judge
Date: 27/02/2026 14:57:48