



Transfer of land development rights is exigible to GST

Prahitha Construction Pvt. Ltd. v. Union of India & Ors¹

Telangana High Court ('the Court') held that transfer of land development rights by virtue of a Joint Development Agreement ('JDA') does not amount to sale of land. Thus, it is outside the purview of entry no. 5 of Schedule III of the Central Goods and Services Tax Act ('GST Act') and it is taxable under GST.

Facts of the case

- Prahitha Construction Pvt. Ltd. ('the Petitioner') engaged in the business of construction of commercial real-estate projects entered into a JDA with landowners whereby development rights of land were transferred to the Petitioner. The Petitioner was obliged to develop the project within a stipulated deadline and handover the landowner's share in the developed property to the landowners
- Considering the JDA conveyed of land to the Petitioner (i.e. outright sale of land), the Petitioner filed a writ petition contending that transfer of development rights is nothing but sale of land by the landowners. The Petitioner contended that execution of the JDA technically is almost like a sale of the land which was to be developed. Consequently, it contended that covered under

entry no. 5 of Schedule III of the GST Act, it should not be subject to levy of GST on such grant of/transfer of development rights (to it) pursuant to the JDA.

- Petitioner further contended that Notification No. 4/2018-Central Tax (Rate) dated January 25, 2018 ('impugned notification') imposing GST on such transfer of development rights is ultra vires Articles 14, 246A and 265 of the Constitution of India.
- The Court was posed with and addressed the following two questions:
 - Whether the transfer of development rights is in the nature of transfer of immovable property or, the nature of services would fall within the scope of GST?
 - Whether the transfer of development rights can be safely brought within the purview of outright sale of land?

Discussion and Findings

- The JDA considered by the Court incorporates the following clauses:
 - Ownership, title, and possession of land vests with the land owners.

¹TS-60-HC(TEL)-2024-GST



- The Petitioner is engaged as an agency to develop the land into a commercial complex.
- JDA will be cancelled if the project is not completed on time, whereas the entire rights over the land would remain with the landowners.
- After completion of the development activity only, the undivided share of land to the extent the petitioner is entitled, could be transferred and not solely by virtue of JDA.
- 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.
- From plain reading of the JDA, what is reflected is that there are two sets of transactions to be met in its entirety. One is an agreement between the landowner and the Petitioner, and another is the supply of construction services by the Petitioner to the landowners and only thereafter sale of constructed area to third party buyers.
- The Court observed that from a plain reading of the JDA, what is reflected is that there are two sets of transactions to be met in its entirety
- Upon a conjoint reading of these clauses in the JDA, it emerged that there is no automatic transfer of ownership of the land to the Petitioner. It was observed that until completion of the project, the Petitioner does not get any right on the said property. Only after the completion of the project and issuance of completion certificate, the Petitioner derives the right to sell the area of property which stood allotted to it.
- Further, ownership in the land is transferred from the landowners directly to the purchaser of the constructed property and, not in favour of Petitioner unless and until the land stands transferred in the name of the Petitioner. Mere execution of the JDA by itself, would not mean that the title and ownership of the property stands transferred in the name of the Petitioner.

- Thus the Court held that transfer of development rights does not result in transfer of ownership and in absence of substantial material to establish right, title and ownership being created in favour of the Petitioner the transfer of development rights is amenable to GST, and simultaneously held that it cannot be brought within the purview of entry no. 5 of Schedule III of the GST Act.
- The Court further held that challenge to the impugned notification is devoid of merits, as Article 264A of the Constitution of India empowers the Parliament and State Legislatures to make laws with respect to GST. The Government after recommendations of the GST Council has issued the impugned notification and so, it is in accordance and with authority of law. Moreover, the impugned notification does not deal with chargeability of tax rather it provides for the time when the tax needs to be paid.

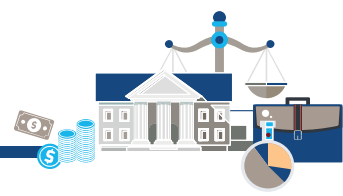
Judgement

Given these discussions, the Court held that the contentions of the Petitioner are not sustainable and, accordingly dismissed the writ petition. The Court held that execution of a JDA, mere transfer of development rights, clauses of the JDA reveal an automated transfer of ownership or title rights of the landowners in favour of the Petitioner (developer).

Dhruva Comments

JDA's are commonly used instrumentalities in the real estate sector and has myriad variations. The Court evaluated the contractual documents and its various clauses to ascertain the true nature of the arrangement between the parties in a JDA, viz. landowner and developer and, a later date third party buyer.

Transaction in land (immovable property) is not exigible to GST since it does not qualify as 'goods' or 'services'. However, the Court through this judgement has elucidated that 'sale of land' and 'transfer of development rights of land' are distinctive aspects and the latter does not tantamount to the former.





ADDRESSES

Mumbai

1101, One World Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

402, 4th Floor, Venus Atlantis,
100 Feet Road, Prahladnagar,
Ahmedabad 380 015
Tel: +91 79 6134 3434

Delhi / NCR

305-307, Emaar Capital Tower - 1,
MG Road, Sector 26, Gurgaon
Tel: +91 124 668 7000

Pune

305, Pride Gateway,
Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403,
Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Abu Dhabi

Dhruva Consultants
1905 Addax Tower, City of Lights,
Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai

Dhruva Consultants
Emaar Square Building 4,
2nd Floor, Office 207,
Downtown,
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Kulraj Ashpni

kulraj.ashpni@dhruvaadvisors.com

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