

## No GST on assignment of leasehold rights

### *Gujarat Chambers of Commerce and Industry v. Union of India*<sup>1</sup>

The Gujarat High Court ('High Court') has ruled that the assignment of leasehold rights in land allotted by the Gujarat Industrial Development Corporation ('GIDC') constitutes a transfer of immovable property and, is not subject to GST. This decision held that transactions fall outside the ambit of GST, i.e. it is not a supply of goods or services, in terms of the provisions of Section 7 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). Paragraph 5(a) of Schedule II and Paragraph 5 of Schedule III are also inapplicable in this case.

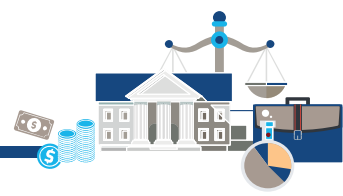
#### Background

- The GIDC was established under the Gujarat Industrial Development Act, 1962, to promote industrial growth by developing industrial estates. It leases plots of land to industrial entities for 99 years under agreements containing detailed terms, including premium and lease rent payable.
- The lease agreements allow lessees (including Gujarat Chamber of Commerce and Industry, Petitioner in the case) to assign their leasehold rights to third parties, subject to GIDC's approval. Such assignment involves the transfer of all rights

and obligations under the lease arrangement to the assignee.

- GST was introduced on July 1, 2017. Tax authorities issued show cause notices to lessees alleging that the assignment of leasehold rights constitutes a 'supply of services' under Section 7(1)(a) of the CGST Act, and the same is taxable at 18% GST.
- The Petitioners challenged the notices, arguing that leasehold rights are an interest in immovable property. They contended that these assignments are neither supply of goods nor supply of services and are explicitly excluded from GST under Paragraph 5 of Schedule III of the CGST Act (which covers *sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*). The exclusion of sale of land and building under Paragraph 5 of Schedule III of the CGST Act has to be interpreted in light of legislative history as well as object and purpose of the statute to include sale of interest in land and benefits arising out of land.
- Further, such rights are land rights, and the intent of the GST Law is not to impose tax on transfer of immovable property as was the case even under the erstwhile service tax regime.

<sup>1</sup>2025 (1) TMI 516 - Gujarat High Court



The Petitioners also argued that taxing such transactions leads to double taxation, as stamp duty is already paid on assignment of leasehold rights.

- The Revenue Department contended that the assignment of leasehold rights is not explicitly excluded under Paragraph 5 of Schedule III, which only stipulates the sale of land and buildings. They further contended that these assignments are a supply of services since they involve valuable consideration, making them taxable under Section 7(1)(a) of the CGST Act. Additionally, the Revenue emphasized that such transactions fall under tariff headings notified under GST.

### High Court's Analysis and ruling

- The High Court analyzed whether assignment of leasehold rights constitutes a 'supply of services' under the CGST Act. It agreed with the Petitioners that leasehold rights are an interest in immovable property. Assigning these rights involves a transfer of immovable property and, is not a supply of service. The High Court cited the provisions under the Transfer of Property Act, 1882 and precedents including **Sri Tarkeshwar Sio Thakur Jiu**<sup>2</sup> to affirm that such rights cannot be equated with supply of services under the CGST Act.
- The High Court held what the Petitioner has transferred by way of assignment/ sale is leasehold rights which is over and above the actual physical plot of land and building, encompasses incorporeal ownership rights in such land and building, such as the right to possess, to enjoy the income from, to alienate, or to recover ownership of such right from one who has improperly obtained the title. Therefore, immovable property includes, in addition to right of ownership, aggregate of rights that are guaranteed and protected by the further agreement or contract between the owner and the lessee.
- The contention of the Revenue Department that the transfer of leasehold rights, as the interest in

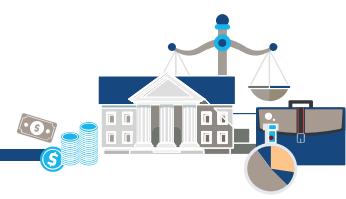
immovable property, covered by the scope of supply of service is not tenable as transaction of assignment is nothing but absolute transfer of right and interest arising out of the land which would amount to transfer/sale of immovable property which cannot be said to be "service" as contemplated under the provisions of GST Act.

- The High Court observed that the immovable property is nothing but, bundle of rights and right to give such property on lease is one of such rights and, further transfer of the right to occupy or possess will continue to remain as supply of service which character will not change merely because lessee of GIDC affects absolute transfer thereof in favor of the assignee leaving no right whatsoever in respect of such leasehold land and building.
- The High Court deliberated on the Allahabad High Court's decision in the **Greater Noida Industrial Development Authority**<sup>3</sup> case, which concerned the levy of service tax on the renting of immovable property. The Allahabad High Court upheld the view that leasing land for commercial purposes constituted a taxable supply of services, irrespective of the lease duration. However, the Gujarat High Court distinguished the said case by emphasizing that the assignment of leasehold right for a lump sum consideration is not merely a rental service but, a transfer of interest in immovable property and so, is excluded from GST net.
- The High Court referred to the **Residents Welfare Association, Noida**<sup>4</sup> case, which dealt with the characterization of deeds as either leases or outright sales for determining stamp duty applicability. In the said case, the Supreme Court clarified that leases involve a partial transfer of rights, with ownership reverting to the lessor upon lease termination, while outright sales result in complete ownership transfer. The High Court used this reasoning to distinguish between renting (a service under GST) and outright assignment of

<sup>2</sup> 1979 (3) SCC 106 (SC)

<sup>3</sup> 2015 (40) STR 95 (All.)

<sup>4</sup>2009 (14) SCC 716 (SC)



leasehold rights (a transfer of immovable property). It concluded that such assignments fall outside the GST ambit as they involve the transfer of rights in the immovable property, unlike in renting of property.

may explore an opportunity to claim refund of tax discharged on supply of leasehold rights in land in the past periods.

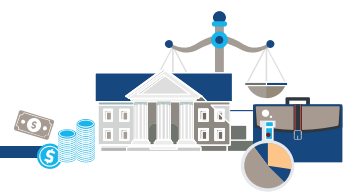
- The High Court highlighted that taxing these transactions under GST, in addition to stamp duty, results in double taxation, which contradicts the GST regime's objective of reducing cascading tax effects. On the basis of these observations, the High Court allowed the petitions and quashed the impugned show cause notices and orders in original or appeal, as the case may be.
- In conclusion, 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", and not liable for GST.

#### **Dhruva Comments**

While the first allotment/ allocation of land by the GIDC would be liable for GST but, exempted (Sr. No. 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017), the High Court held that subsequent assignment of leasehold rights (as in the present case) was outside the pale of GST, and not taxable.

Interestingly, CBIC *vide* its Circular No. 44/18/2018-GST dated 02.05.2018 clarified that the activity of transfer of 'tenancy rights' is covered under the scope of supply and is taxable. How this decision will impact other rights and benefits (such tenancy rights) arising out of land and building, will have to be seen.

The judgment provides a much-needed clarity on the taxability of leasehold rights under GST, marking a welcome relief for businesses. The decision reinforces the exclusion of immovable property transactions from GST. It also serves as a precedent for challenging similar GST demands and highlights the importance of distinguishing between transactions involving immovable property rights and those qualifying as services under GST. Given this ruling, the taxpayers



## 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

### Bengaluru

Lavelle Road, 67/1B,  
4th Cross, Bengaluru,  
Karnataka – 560001  
Tel: +91 90510 48715

### Delhi / NCR

305-307, Emaar Capital Tower-1,  
MG Road, Sector 26, Gurgaon  
Haryana - 122 002  
Tel: +91 124 668 7000

### New Delhi

1007-1008, 10th Floor,  
Kailash Building,  
KG Marg, Connaught Place,  
New Delhi – 110001  
Tel: 011 4514 3438

### GIFT City

Dhruva Advisor IFSC LLP  
Pragya Accelerator, Unit FF 36,  
Block 15, GIFT SEZ,  
Gandhi Nagar- 382355,  
Gujarat, India.  
Tel: +91 7878577277

### 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

### Singapore

NeoDhruva Consultants  
#16-04, 20 Collyer Quay,  
Singapore 049319  
Tel: +65 9144 6415

## 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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