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# LITIGATION ALERT

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Supreme Court dismisses Revenue's SLP -  
Assignment of leasehold rights not liable  
for GST

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# Supreme Court dismisses Revenue's SLP | Assignment of leasehold rights not liable for GST

## Assistant Commissioner (Anti-Evasion) vs. Aerocom Cushions Private Limited<sup>1</sup>

The Hon'ble Supreme Court of India dismissed Special Leave Petition (SLP) filed by the Revenue-Department, thereby affirming the judgment of the Bombay High Court (Nagpur Bench) in Writ Petition No. 2145/2025, dated 09-01-2026. The High Court held that assignment/transfer of leasehold rights in an industrial plot allotted by Maharashtra Industrial Development Corporation (MIDC) does not constitute "supply of services" under Section 7 of the CGST Act, 2017, and accordingly cannot attract levy of GST.

### Background and facts

- Aerocom Cushions Private Limited (Respondent) held a 95-year lease of an industrial plot allotted by MIDC. The lease deed permitted transfer of leasehold rights with the prior consent of MIDC.
- The Respondent assigned its leasehold rights in the said plot, along with the factory building constructed thereon, in favour of M/s. Rishita Industries for a consideration of Rs. 1,50,00,000/- with the prior consent of MIDC Hingna, Nagpur. Additional premium of Rs. 3,95,640/- was paid to MIDC, in connection with the transfer.
- The lease deed between MIDC and the Respondent expressly permitted transfer of leasehold rights, under Clause 2(u). Accordingly, the Respondent's rights under the

lease stood extinguished upon the assignment – the Respondent believed that the transaction did not constitute a sub-lease.

- The Assistant Commissioner (Anti-Evasion) issued a Show Cause Notice (SCN) under Section 74(1) of the CGST Act demanding GST on the ground that the Respondent had concealed this transaction and that the assignment of leasehold rights constituted a "supply of services" taxable at 18% under Sr. No. 35 of Notification No. 11/2017-CT (Rate) dated June 28, 2017, classifying the transaction as "other miscellaneous services."
- The Revenue-Department contended that the transaction amounted to supply of services under Section 7(1) of the CGST Act read with Clause 2(b) of Schedule II, which Schedule treats any lease or letting out of a building including a commercial, industrial or residential complex for business or commerce, as a supply of services.
- The Taxpayer challenged the SCN before the Bombay High Court contending that the assignment of leasehold rights constituted a transfer of benefits arising out of immovable property, which falls outside the scope of supply under the GST Act, and relied on the Gujarat High Court's ruling in **Gujarat Chamber of Commerce v. Union of India**<sup>2</sup>, which decision had decided a similar issue in favour of another (Taxpayer).

<sup>1</sup> TS 380 SC 2026

<sup>2</sup> TS-03-HC(GUJ)-2025-GST

## Findings of the Bombay High Court

- The High Court noted that the SCN itself acknowledged that the transaction in question did not amount to a sub-lease, as the assessee's own rights stood extinguished upon the assignment.
- Schedule II, Clause 2(b) of the CGST Act (which treats 'any lease or letting out of a building for business or commerce' as a supply of services) was inapplicable in this case as the transaction was neither a lease nor a sub-lease
- The Revenue-Department's attempt to classify the transaction as "other miscellaneous services" under Sr. No. 35 of Notification No. 11/2017-CT (Rate) a residual entry covering services such as washing, cleaning, dyeing and beauty services was held to be manifestly bad in law. Such unrelated services could not, by any stretch, be extended to cover an assignment of leasehold rights in immovable property.
- The Court held that the transaction in question constituted a transfer of immovable property by the assessee Taxpayer to Rishita Industries and pertained exclusively to the transfer of benefits arising out of an immovable property. Critically, it was observed that the transaction had no nexus whatsoever with the business of the assessee and consequently, the essential element of supply of service "in the course or furtherance of business" as required under Section 7(1)(a) of the CGST Act was entirely absent. Further, these leasehold rights were transferred with the permission of MIDC and post transfer, the rights with the Respondent wholly extinguished.
- The Bombay High Court placed extensive reliance on the judgment in **Gujarat Chamber of Commerce and Industry**, which had considered a similar issue involving assignment of leasehold rights of GIDC allotted plots. The Gujarat High Court, after examining the provisions of the CGST Act alongside the General Clauses Act, 1887, Transfer of Property

Act, 1882 and Registration Act, 1908, had concluded that assignment by sale and transfer of leasehold rights of a plot allotted by a statutory corporation to a lessee, in favour of a third-party assignee for consideration, is an assignment/sale/transfer of benefits arising out of "immovable property" and does not fall within the scope of supply under Section 7 of the CGST Act so as to attract levy under Section 9 of the CGST Act thereof.

- The Bombay High Court subscribed to and affirmed the view of the Gujarat High Court, holding it to be in consonance with the provisions of law on supply of services.
- The Court further held that the Gujarat High Court's ruling was binding on the Revenue-Department, relying on its own earlier decision in **Smt. Godavari Devi Saraf**<sup>3</sup>, wherein it had been held that the law declared by a High Court of another State, until a contrary decision is rendered by any other competent High Court, is binding on tribunals and authorities within the State of Bombay.
- The Bombay High Court allowed the writ petition of the Taxpayer, and set aside the SCN holding that an assignment/transfer of leasehold rights in an industrial plot allotted by a statutory corporation such as MIDC to a lessee, in favour of a third-party assignee for consideration, constitutes a transfer of benefits arising out of immovable property and does not fall within the scope of supply of services under Section 7 of the CGST Act.
- The Revenue-Department's attempt to classify the assignment/sale/transfer of leasehold rights as "other miscellaneous services" under Sr. No. 35 of Notification No. 11/2017-CT (Rate) – a residual entry covering petty services such as washing, cleaning, dyeing and beauty services – was squarely and firmly rejected by the Bombay High Court.

<sup>3</sup> Commissioner of Income-Tax, Vidarbha vs. Smt. Godavari Devi Saraf, (1978) 113 ITR 589

- The Revenue-Department preferred an appeal by way of SLP before the Supreme Court.

#### **Judgement of the Supreme Court**

- The Supreme Court dismissed the SLP holding that it is not inclined to interfere with the judgment of the Bombay High Court.

## 1. Conclusion on the issue

The Bombay High Court ruled that assignment/transfer of leasehold rights in an industrial plot allotted by a statutory industrial development corporation to a third-party assignee, for consideration, constitutes a transfer of benefits arising out of immovable property and so, does not fall within the scope of “supply” under Section 7 of the CGST Act, 2017, accordingly is not liable to GST. The Court also held that the transaction has no nexus with the business of the Taxpayer.

The Bombay High Court followed the view expressed in **Gujarat Chambers of Commerce and Industry** and held that assignment by sale and transfer of leasehold rights of the plot of land allotted by MIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/transfer of benefits arising out of immovable property.

The two High Courts approached the issue against varied backgrounds, yet the same conclusion. The Gujarat High Court in **Gujarat Chamber of Commerce and Industry** examined the scope of supply under Section 7(1)(a) of the CGST Act read with Clause 5(b) of Schedule II (construction of a complex / building) read with Clause 5 of Schedule III (sale of land and, subject to Clause (b) of paragraph 5 of Schedule II, sale of building), and concluded that the assignment/transfer of leasehold rights falls entirely outside the scope of supply. The Bombay High Court, on the other hand, focused on Section 7(1) read with Clause 2(b) of Schedule II (any lease or letting out of a building including a commercial, industrial or residential complex for business or commerce is a supply of services) held that since the assignment extinguished the assignor’s own rights (rendering it neither a lease nor a sub-lease), Clause 2(b) of Schedule II was plainly inapplicable to the transaction.

The Bombay High Court additionally held that the foundational condition under Section 7(1)(a) of the CGST Act – that supply must be made “in the course or furtherance of business” – was absent, since the assignment/transfer of leasehold rights pertained exclusively to immovable property and had no nexus with the assessee’s core manufacturing business.

## 2. SLP dismissal – not a declaration of law; doctrine of merger does not apply

The Supreme Court's order is not a judgment. The SLP was dismissed *in limine* – i.e. the leave to appeal against the Bombay High Court's order was not granted to the Revenue-Department – and the Court did not indulge the Revenue-Department, by recording that it was “*not inclined to interfere with the impugned judgment*”. Such a dismissal is not a declaration of law under Article 141 of the Constitution of India and moreover does not constitute a binding precedent<sup>4</sup>. Parties and courts are therefore not bound by the Supreme Court's order, in the same manner as they would be bound by a judgment on an issue. This issue has hence attained finality only in the case of **Aerocon**.

Separately, the doctrine of merger does not apply to this situation. In **Kunhayammad v. State of Kerala**<sup>5</sup>, the Supreme Court held that it cannot, at the SLP stage, reverse or modify – and equally cannot be said to have affirmed – an impugned order. In **Pernod Ricard India (P) Ltd. vs. Commr. of Cus., ICD, Tughlakabad**<sup>6</sup> the law was declared that once a statutory right of appeal is invoked, i.e., SLP allowed and converted to Civil Appeal, dismissal of this appeal by the Supreme Court, whether by a speaking order or non-speaking order, the doctrine of merger applies, however, in the case of dismissal of a SLP, the doctrine of merger does not apply.

In this matter, since leave was not granted, the Supreme Court did not assume appellate jurisdiction over the Bombay High Court's judgment, accordingly, the High Court's judgment stands on its own merits and is binding in the territory over which it exercised jurisdiction. In other words, the Revenue-Department can well be expected to contend, in other proceedings that the Supreme Court's dismissal cannot be cited as a binding precedent.

## 3. Be that as it may – the litigation continues

The SLP challenging the Gujarat High Court's judgment in **Gujarat Chamber of Commerce and Industry** is pending before the Supreme Court.

That apart, a batch of writ petitions<sup>7</sup> is pending before the Principal Bench of the Bombay High Court involving GST on assignment/transfer of leasehold rights in MIDC and similar industrial plots; these petitions while admitted are yet to be decided.

Findings and conclusions from the Supreme Court and the Bombay High Court in the respective proceedings will be relevant for all assesses.

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<sup>4</sup> State of Orissa vs. Dhirendra Sundar Das - Civil Appeal No. 4646 of 2019

<sup>5</sup> (2000) 6 SCC 359

<sup>6</sup> 2010 (256) E.L.T. 161 (S.C.)

<sup>7</sup> Writ Petition (L) No. 42522 of 2025

#### 4. What should taxpayers do?

**(a) GST not applicable:** Based on the concurrent and consistent judgments of the Gujarat High Court and Bombay High Court (and the Supreme Court's non-interference), while the issue has attained finality for **Aerocon**, other taxpayers in Maharashtra and Gujarat have a well-founded basis to adopt the position that assignment/transfer of leasehold rights does not constitute a "supply" under Section 7 of the CGST Act and, is accordingly not liable to GST. Adopting this position will be dependant on the facts and document of each case. In assessment or adjudication proceedings, these judgments and the underlying analysis can be cited in the assessee's defence. However, this view bears the risk of litigation, as the Revenue-Department could take a contrary view and cite pendency of the batch of Writ Petitions before the Bombay High Court and the Supreme Court.

The parties (Taxpayers) in other jurisdictions, i.e., not in Maharashtra and Gujarat, may adopt the position of non-taxability on the strength of the judgments of Bombay High Court and Gujarat High Court. Undeniably, this position may prove litigious moreso since the SLP was dismissed, *in limine*, in **Aerocon's** case and the SLP is pending in the case of **Gujarat Chambers of Commerce and Industry**.

**(b) Refund where GST was paid under protest** –Taxpayers that have paid GST on such transactions of assignment under protest, should file refund claims relying on these judgments.

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