

Gujarat Chamber of Commerce and Industry & Ors. vs. Union of India & Ors.

[Order dated 03.01.2025 in Special Civil Application No. 11345 of 2023 and connected matters]

The Hon'ble Gujarat High Court examined the applicability of Goods and Services Tax (GST) to the transfer/assignment of leasehold rights in industrial land under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

Brief facts of the case:

The Gujarat Industrial Development Corporation (GIDC), established under the Gujarat Industrial Development Act, of 1962, acts as the nodal agency of the Government of Gujarat for developing industrial estates. GIDC acquires land, develops infrastructure (roads, water supply, street lighting, etc.), and allots industrial plots to entities through long-term lease agreements (typically 99 years). A registered lease deed is executed upon fulfillment of specific conditions in the allotment letter. The lease deed allows lessees to assign their leasehold rights to third parties with GIDC's approval, subject to the payment of transfer fees.

The petitioners, including the Gujarat Chamber of Commerce and Industry, challenged the imposition of GST on transactions involving the transfer or assignment of leasehold rights in industrial land. They argued that such transactions do not constitute a "supply" of goods or services as defined under the GST regime, emphasizing that the nature of the transaction is akin to a sale of an interest in immovable property, which is outside the purview of GST.

The Hon'ble Court's Ruling Addressed the following Critical Aspects:

1) Scope of the Term 'Property':

- In strict legal parlance, the term 'property' refers to the right of ownership or an aggregate of rights guaranteed and protected by law. This includes the rights to possess, use, enjoy, dispose of, and exclude others from interfering with it.
- The Court observed that 'property' encompasses both physical objects (such as plots of land and buildings) and incorporeal ownership rights, like the right to possess, derive income, or alienate property. Leasehold rights fall under the category of incorporeal rights, adding further weight to the petitioners' argument.

2) Scope of the Term 'Immovable Property':

- Since the CGST Act does not define 'immovable property,' the Court referred to relevant provisions in other statutes: Section 3(26) of the General Clauses Act, 1897, Section 3 of the Transfer of Property Act, 1882, and Section 2(6) of the Registration Act, 1908. These statutes collectively describe immovable property as including tangible land/buildings and intangible rights arising from the land.

- The Court highlighted provisions under the Gujarat Stamp Act, 1958, and the Registration Act, requiring mandatory registration of assignment agreements and equating long-term leases exceeding 98 years to conveyances for stamp duty purposes.

- Additionally, Entry No. 41 of Notification No. 12/2017 was cited, which exempts certain long-term leases by state industrial development corporations from GST obligations.

- Under the Transfer of Property Act, an absolute transfer through assignment conveys ownership rights along with the underlying interest in the land, aligning with the exclusion of immovable property from GST.

- Moreover, the petitioners gained benefits by constructing and operating a factory building, which is "profit à prendre," an immovable property not taxable under the GST Act. GIDC only leased the land, and the lessee developed it with a building for business use. The transfer to the assignee includes both the land and the building, along with leasehold rights. This transfer of immovable property is not subject to GST.

3) Assignment as a Transfer of Immovable Property:

- The Court ruled that assignment rights are akin to the transfer of immovable property, as these rights represent the benefits and legal interests arising from such property.

- Referencing *Gopal Saran vs. Satya Narayana* (1989), the Court noted that the term 'assignment' includes the complete transfer of all rights in a property, including lease rights, making it a transfer of immovable property subject to stamp duty rather than GST.

- Applying these principles, the Court held:

- The assignment extinguishes the assignor's estate in the property and transfers all rights to the assignee.

- Such transactions include both the tangible (land/building) and intangible (rights to possess, alienate, or derive income) aspects of immovable property.

- Therefore, leasehold rights, being indivisible from immovable property, cannot be taxed under GST.

4) GST Applicability to Assignment Rights under Section 7 of the CGST Act

- The Court analyzed the definition of "supply" under Section 7 of the CGST Act and clarified that the transfer of leasehold rights in immovable property does not fall within the ambit of "supply" because it lacks the characteristics of goods or services.

- Further, the court referred to Sections 2(17), 2(102), and 2(105) of the CGST Act to analyze whether the assignment of leasehold rights constituted a "supply" under GST.

- Section 2(17) defines "business" to include activities undertaken for consideration, but the Court held that the absolute transfer of leasehold rights is not a business activity; it is a property transaction.

- Section 2(102) defines "services" as anything other than goods, money, and securities, but the court concluded that leasehold rights represent an interest in immovable property, which does not qualify as a service.

- Section 2(105) defines a “supplier” as someone supplying goods or services, but the Court found that the assignor does not act as a supplier in such transactions.

- These provisions collectively supported the conclusion that the transfer of leasehold rights is not a taxable supply under GST.

- Clause 5 of Schedule III to the CGST Act explicitly treats leasehold rights as tantamount to the sale of immovable property, thereby excluding them from the definition of 'supply' under GST.

- Further, under Section 65B(44) of the Finance Act, 1994 (Service Tax Law), the transfer of title in immovable property was explicitly excluded from taxable services. The Court observed that the GST regime, aimed at subsuming prior indirect taxes, did not alter this intent.

- The Statement of Objects and Reasons appended to the Central GST Bill, 2017, clarified that GST would apply to goods and services but excluded immovable property from its ambit.

- In *Munjaal Manishbhai Bhatt vs. Union of India* [2022 (104) GSTR 419], the Gujarat High Court clarified that the supply of land, including leasehold rights, was excluded from GST as it constitutes a transfer of immovable property. The current judgment applies this principle to transactions involving industrial plots leased by GIDC.

- Notification No. 11/2017-Central Tax (Rate), which prescribes GST on construction services, also excludes the value of land transferred by lease, supporting the argument that leasehold rights are not subject to GST.

5) Leasehold vs. Assignment Rights:

- The Hon'ble Court held that the assignment or transfer of leasehold rights in industrial land amounts to a transaction in immovable property. Consequently, it is not taxable under the GST Act.

- The petitioners also argued that the absolute transfer of rights extinguishes the assignor's relationship with the lessor, qualifying it as a transfer of immovable property.

- Moreover, Section 105 of the Transfer of Property Act equates leasehold rights to immovable property, supporting their exclusion from GST.

- Furthermore, Entry No. 41 of Notification No. 12/2017 exempts such transfers involving state industrial development corporations, underscoring their non-taxable status.

- The Court differentiated between leasing (partial transfer of rights by the lessor) and assignment (absolute transfer of all rights by the assignor). The latter, being equivalent to the sale of immovable property, is not a supply under GST.

- The Court rejected the respondent's claim that transferring leasehold rights is a taxable service under Group 999792 at 18% per Serial No. 35 of Notification No. 11/2017 - Central Tax (Rate). It clarified that the consideration is for the outright sale of leasehold rights, which cannot be equated with sub-leasing.

- In the present case, the transfer included not only leasehold rights but also associated buildings and fixtures, making the entire transaction a transfer of immovable property exempt from GST. It must be noted that the Court confined its observations to industrial plots leased by GIDC and did not extend to all immovable property transfers.

6) Recovery of Premium and Transfer Fees:

- While the primary issue was the taxability of assignment rights, the Court commented on the premium charged for land allotments and transfer fees levied by GIDC.

- Premium and periodic rentals were categorized as services related to immovable property, subject to GST.

- Transfer fees, charged for permitting assignments, were deemed a taxable service under GST, distinct from the underlying assignment transaction.

Final Judgment:

Accordingly, HC held that the assignment of leasehold rights is not leviable to GST, and impugned show cause notices and orders were quashed and set aside. The show-cause notices and demand orders issued by tax authorities were quashed. The prayer for a stay on the judgment was also denied.

Recent Update :

The Bombay High Court, in the case of *Panacea Biotec Limited vs. Union of India & Ors.* [Writ Petition No. 13587 of 2024], quashed the GST demand on the transfer/assignment of leasehold rights and directed a fresh adjudication of the matter. The Court highlighted procedural lapses, particularly the Revenue's failure to consider the petitioner's reply to the show-cause notice, dated 22nd July 2024, which had been duly submitted but erroneously recorded as absent. The High Court observed that the impugned order violated the principles of natural justice. Notably, the court referenced the instant Gujarat High Court's judgment that transactions involving the assignment of leasehold rights in industrial land do not attract GST as they constitute a transfer of immovable property. While the Bombay High Court did not delve into the merits of the Gujarat High Court ruling, it directed the adjudicating authority to consider this judgment while re-evaluating the case. This decision reinforces the need for a comprehensive review of such transactions under GST law, ensuring adherence to natural justice and consistency with existing precedents.

White and Brief comments :

The Gujarat High Court's judgment provides clarity on the taxability of leasehold rights transfers under GST, resolving an issue that had led to widespread litigation and notices across India. By classifying the transfer of leasehold rights along with the building as a transfer of immovable property, the court excluded such transactions from GST, aligning them with the sale of land and buildings. This follows from the West Bengal Advance Ruling Authority's 2020 decision in *M/s Enfield Apparels Limited* [2020(8) TMI 251], which had classified leasehold transfers as a service. The court emphasized that such transfers represent a transfer of legal interest in land, similar to a sale, and therefore not subject to GST. By holding that such transactions constitute a transfer of immovable property and not a taxable 'supply of services,' the decision eliminates the uncertainty and financial burden that had plagued businesses particularly MSMEs operating under long-term lease models in industrial estates. The judgment draws on principles from the service tax regime wherein development rights from the land were not taxable. Since leasehold rights are even more substantial, the same principle should apply under GST, as GST aims to replace and unify existing taxes. Hence, development rights, a type of property right, are not taxable as services. The ruling also touches on input tax credit issues, highlighting previous rulings like *M/s Bayer Vapi P. Ltd* [2023 (9) TMI 165], which disallowed credit for leasehold property used in industrial units. If implemented well, this decision could lead to a more predictable and business-friendly tax system in India. While this decision is pivotal for industries dealing with leasehold land, its potential appeal to the Supreme Court means that its ultimate impact remains uncertain, and businesses must remain vigilant regarding future developments.