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SC dismissed Revenue's SLP; Affirms No GST On Assignment of Leasehold Rights in Industrial Land

The Hon'ble Supreme Court in the case of ***Assistant Commissioner (Anti Evasion) & Anr. v. Aerocom Cushions Private Limited [Special Leave Petition (Civil) Diary No. 26041 of 2026 dated May 22, 2026]*** dismissed the Special Leave Petition ("SLP") filed by the Revenue against the judgment of the Hon'ble Bombay High Court and held that the assignment of leasehold rights in industrial land by the original lessee in favour of a third-party assignee, with prior consent of the Maharashtra Industrial Development Corporation ("**MIDC**"), constitutes a transfer of immovable property and does not amount to a 'supply of service' under Section 7 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). The Hon'ble Supreme Court concurred with the view of the Hon'ble Bombay High Court that the transaction of transfer of benefits arising out of an immovable property has no nexus whatsoever with the business of the assessee and therefore, the essential element of supply of service in the course of business or in furtherance of business is completely absent.

Facts:

Aerocom Cushions Private Limited ("**the Respondent**" or "**the Assessee**") was allotted an industrial plot bearing No. F-14/2, MIDC, Hingna Road, Nagpur, by the MIDC on a long-term lease of 95 years. The Assessee had constructed a factory building on the said plot.

Clause 2(u) of the lease deed executed between MIDC and the Assessee permitted transfer of the leasehold rights, subject to prior consent of MIDC.

Pursuant to the said clause, the Assessee assigned its leasehold rights in the said plot, along with the factory building constructed thereon, in favour of M/s Rishita Industries (through its proprietor Mr. Sumit Madanlal Pagariya) for a consideration of Rs. 1,50,00,000/-, with the prior

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consent of MIDC. The Assessee also paid an amount of Rs. 3,95,640/- to MIDC as additional premium for the said transfer.

The Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur-1 ("**the Revenue**" / "**the Petitioner**") issued a Show Cause Notice bearing No. 47/AC/GST/NGP-I/2024 dated December 20, 2024 ("**the Impugned SCN**") under Section 74(1) of the CGST Act, alleging that the Assessee had concealed the transaction and proposing a demand of GST of Rs. 27,00,000/- on the consideration received towards transfer of leasehold rights.

The Revenue contended that the said transfer of assignment of rights amounted to 'supply of services' in terms of Section 7(1) of the CGST Act read with Clause 2(b) of Schedule II and was classifiable as 'other miscellaneous services' taxable at 18% under Sl. No. 35 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.

Aggrieved by the Impugned SCN, the Assessee filed **Writ Petition No. 2145 of 2025** before the Hon'ble Bombay High Court (Nagpur Bench).

The Hon'ble Bombay High Court vide its judgment dated January 09, 2026 in **Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion) [Writ Petition No. 2145 of 2025]** allowed the Writ Petition, quashed the Impugned SCN, and held that assignment of leasehold rights in immovable property does not constitute supply of service under the CGST Act, following the ratio of the Hon'ble Gujarat High Court in **Gujarat Chamber of Commerce and Industry v. Union of India [R/SPECIAL CIVIL APPLICATION NO. 11345 of 2023]** ("**the GCCI judgment**").

Aggrieved by the judgment of the Hon'ble Bombay High Court, the Revenue preferred a Special Leave Petition before the Hon'ble Supreme Court.

Issue:

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Whether the assignment/transfer of leasehold rights of an industrial plot allotted by MIDC, along with the building constructed thereon, by the original lessee-assignor in favour of a third-party assignee for a lump-sum consideration, with prior consent of MIDC, amounts to 'supply of service' within the meaning of Section 7 of the CGST Act and is consequently exigible to GST?

Held:

The Hon'ble Supreme Court in **SLP (Civil) Diary No. 26041 of 2026** held as under:

- **Observed that**, during the course of hearing, the Hon'ble Supreme Court called upon the Revenue to demonstrate that the assignment of leasehold rights was in the course or furtherance of business, remarking that *"then only it comes within the definition of supply"*.
- **Noted that**, on examining the contentions, the Assessee had assigned the entire leasehold rights in the plot to the third party with the permission of MIDC and had also paid additional premium for the said transfer. The transaction was a one-time outright assignment which extinguished the rights of the Assessee in the plot.
- **Noted that**, the Hon'ble Bombay High Court had rightly concluded that the transfer of benefits arising out of an immovable property has no nexus whatsoever with the business of the Assessee and consequently, the essential ingredient of *"supply of service in the course of business or in furtherance of business"* as contemplated under Section 7(1)(a) of the CGST Act was completely absent.
- **Observed that**, although the Revenue contended that the ratio of the Hon'ble Gujarat High Court in the GCCl judgment was under challenge before the Hon'ble Supreme Court, each matter has to be decided on its own factual matrix. The pendency of challenge against the said ruling does not, by itself, dilute the principle applied by the Hon'ble Bombay High Court on the facts of the present case.

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- **Held that**, *"this is not furtherance of business. He has assigned the entire leasehold rights to the other party with the permission of MIDC. He has paid premium also. This cannot come within supply."*
- **Held that**, the Hon'ble Supreme Court was not inclined to interfere with the impugned judgment and order of the Hon'ble Bombay High Court and accordingly stated, *"We are not inclined to interfere with the impugned judgment and order of the High Court, hence, the special leave petition is dismissed."*
- **Held that**, the delay in filing the Special Leave Petition stood condoned and the SLP was dismissed, thereby affirming the view of the Hon'ble Bombay High Court that assignment of leasehold rights of an industrial plot allotted by MIDC, along with the building thereon, to a third-party assignee for a consideration is a transfer of benefits arising out of immovable property and is not exigible to GST.

Our Comments:

The dismissal of the Revenue's SLP by the Hon'ble Supreme Court is a watershed development in GST jurisprudence which lays to rest the long-standing controversy as to the taxability of assignment of leasehold rights in industrial land allotted by State Industrial Development Corporations such as GIDC, MIDC, MPIDC, MIDCO, etc. While the dismissal is *in limine* (without a speaking order on merits beyond the recorded oral observations), the Hon'ble Court's clear acceptance of the rationale of the Hon'ble Bombay High Court lends strong persuasive value to the view that such transactions fall outside the scope of "supply" under the CGST Act.

Section 7(1)(a) of the CGST Act defines "supply" to include all forms of supply of goods or services such as sale, transfer, barter, exchange, licence, rental, lease or disposal, made or agreed to be made **for a consideration by a person in the course or furtherance of business**. Section 7(1A) provides that activities or transactions constituting a supply under Section 7(1) shall be treated either as supply of goods or supply of services as referred to in Schedule II.

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Clause 2(a) of Schedule II provides that any lease, tenancy, easement, licence to occupy land is a supply of services, while clause 2(b) treats any lease or letting out of a building for business or commerce as a supply of services. Schedule III, on the other hand, in Clause 5 declares that sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building, shall not be treated as supply of goods or supply of services.

The crucial finding affirmed by the Hon'ble Supreme Court is that an outright assignment of leasehold rights, which extinguishes the rights of the lessee-assignor and substitutes the assignee in his place vis-à-vis the lessor (i.e., the Industrial Development Corporation), is neither a fresh lease nor a sub-lease. It is a transfer of "benefits arising out of immovable property", which, under settled jurisprudence flowing from Section 3(26) of the General Clauses Act, 1897 and Section 3 of the Transfer of Property Act, 1882, is itself immovable property. Consequently, such transfer cannot be artificially fragmented from the immovable property to which it is attached and brought within the net of GST.

Equally significant is the Hon'ble Supreme Court's emphasis on the "course or furtherance of business" requirement. The assessee in the present case was engaged in the manufacture of cushions and not in the business of trading or dealing in immovable property. The one-time monetisation of the leasehold interest in the factory plot, therefore, was a capital transaction and not a business transaction. This reasoning is consistent with the Hon'ble Gujarat High Court's decision in ***Gujarat Chamber of Commerce and Industry v. Union of India [R/SPECIAL CIVIL APPLICATION NO. 11345 of 2023]***, wherein the Hon'ble High Court had elaborately examined the legislative history, the Agenda of the 5th and 7th GST Council Meetings, the concept of "profit à prendre", and the General Clauses Act, 1897, Transfer of Property Act, 1882 and Registration Act, 1908, to conclude that assignment of leasehold rights in industrial land is a transfer of immovable property and falls outside the ambit of supply under Section 7 read with Schedule II and Schedule III of the CGST Act.

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It is also pertinent to note that the Hon'ble Bombay High Court had additionally held that the Impugned SCN was bad in law on the count that the residual entry at Sl. No. 35 read with Sl. No. 1 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, which covers "other miscellaneous services including services nowhere else classified" (alongside washing, cleaning, dyeing, beauty and physical well-being services), could not be stretched to cover assignment of leasehold rights in immovable property. The Hon'ble Bombay High Court further reiterated, applying the ratio of the Full Bench in **Commissioner of Income-Tax, Vidarbha v. Smt. Godavari Devi Saraf [(1978) 113 ITR 589]**, that in the absence of a contrary decision by any other competent High Court, the judgment of the Hon'ble Gujarat High Court in the GCCI judgment was binding on the GST authorities in Maharashtra.

It is relevant to note that prior to the GCCI judgment, multiple Advance Ruling Authorities had taken a divergent view. For instance, the Gujarat AAR in **Re: Gujarat Industrial Development Corporation and the Maharashtra AAAR in Re: India Pistons Limited** had held that assignment of leasehold rights is a taxable supply of service classifiable under SAC 9997 ("**Other miscellaneous services**") attracting GST at 18%. The judgments of the Hon'ble Gujarat High Court and Hon'ble Bombay High Court, now affirmed by the Hon'ble Supreme Court, effectively overrule the said advance rulings to the extent of their inconsistency.

Practical implications for the trade and industry: **(i)** assesseees who have discharged GST under protest on such assignment transactions are now in a strong position to claim refund of such GST under Section 54 of the CGST Act, subject to the law of limitation and the bar of unjust enrichment; **(ii)** pending show cause notices, adjudication orders and appeals on this issue ought to be dropped or set aside following the ratio of the present judgment; **(iii)** assesseees who have availed Input Tax Credit ("**ITC**") of GST charged by the assignor in such transactions may need to revisit the eligibility of such ITC, since the underlying transaction itself is now held to be a non-supply, and ITC on a non-supply is impermissible; and **(iv)** stamp duty on the deed of assignment would continue to be payable under the relevant State Stamp Act, as the transaction is classified as transfer of immovable property.

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However, a fine line of distinction must be borne in mind. The Hon'ble Gujarat High Court has clarified that: **(a)** the original allotment of land by GIDC/MIDC on long-term lease for a one-time upfront premium is a supply of service, although it is exempt by virtue of Entry No. 41 of *Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017* (Nil rate) for long-term leases of 30 years or more granted by State Industrial Development Corporations to industrial units; **(b)** the transfer fee/charges paid to GIDC/MIDC for granting permission to assign is taxable as supply of service at 18%; whereas **(c)** the consideration received by the original lessee-assignor from the third-party assignee for outright transfer/assignment of the leasehold rights along with the building constructed thereon is not exigible to GST. The present Supreme Court ruling fortifies position (c).

In conclusion, the dismissal of the Revenue's SLP by the Hon'ble Supreme Court provides much-needed certainty to industrial assesseees and brings the law in alignment with the constitutional scheme of GST, which never intended to tax transactions in immovable property. The Revenue is well-advised to issue suitable trade notices/instructions to the field formations to ensure that no further demands are raised, and pending demands are dropped, on this issue.

Relevant Provisions:

Section 7 of the CGST Act, 2017 – 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, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

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Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(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) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

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Schedule II – Clause 2: Land and Building

(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.

Schedule III – Clause 5

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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