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No GST Levy on Assignment of Leasehold Rights of Industrial Plots as Supreme Court Dismisses Revenue's SLPs

The Hon'ble Supreme Court in ***Union of India & Ors. v. Gujarat Chamber of Commerce and Industry & Ors. [SLP (C) Diary No. 33270 of 2025 dated July 21, 2026]*** dismissed the batch of Special Leave Petitions filed by the Revenue against the judgment of the Hon'ble Gujarat High Court dated January 03, 2025, which had held that assignment/sale and transfer of leasehold rights of a plot of land allotted by the Gujarat Industrial Development Corporation (**"GIDC"**) along with the buildings constructed thereon, by the lessee-assignor in favour of a third-party assignee for a lump-sum consideration, is a transfer of immovable property and would not be subject to levy of GST. The Hon'ble Supreme Court, while dismissing the SLPs, declined the Revenue's request to clarify the taxability of a standalone transfer of development rights without transfer of the underlying land, thereby keeping the larger question of law open.

Facts:

The GIDC allots plots of land in industrial estates developed by it on long-term lease to industrial units against payment of a one-time premium followed by periodical lease rent. The ownership of the plot remains with the GIDC and only the rights of possession and occupation are conferred upon the allottee-lessee by way of leasehold rights.

Various members of the Gujarat Chamber of Commerce and Industry, being original allottees-lessees or their successors, assigned and transferred their leasehold rights in such plots, along with the factory buildings/sheds constructed thereon, in favour of third-party assignees for a lump-sum consideration, with the prior consent of the GIDC, whereupon the assignee stepped into the shoes of the original lessee.

The GST Department issued show cause notices and passed orders seeking to levy GST at 18% on such assignments, treating the transaction as a taxable supply of service classifiable under

"other miscellaneous services" under Sr. No. 35 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.

The Hon'ble Gujarat High Court in ***Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors. [Special Civil Application No. 11345 of 2023 dated January 03, 2025]*** allowed the writ petitions and quashed the show cause notices and consequential orders, holding that the assignment of leasehold rights along with buildings amounts to transfer of immovable property, which is outside the scope of "supply" under Section 7(1)(a) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) read with Clause 5(b) of Schedule II and Clause 5 of Schedule III thereof.

Aggrieved thereby, the Revenue preferred the present batch of Special Leave Petitions before the Hon'ble Supreme Court. In the interregnum, the Hon'ble Bombay High Court in ***Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion) [Writ Petition No. 2145 of 2025 dated January 09, 2026]*** followed the ratio of the Gujarat High Court and quashed a demand raised on assignment of leasehold rights in a plot allotted by MIDC, and the Revenue's SLP against the said judgment was dismissed by the Hon'ble Supreme Court vide order dated May 22, 2026 in ***SLP (C) No. 18772 of 2026***, observing that it was not inclined to interfere with the impugned judgment.

<u>Issue:</u>

Whether the assignment/sale and transfer of leasehold rights of a plot of land allotted by the GIDC, along with the buildings constructed thereon, by the lessee-assignor in favour of a third-party assignee for a lump-sum consideration, amounts to a supply of service under Section 7 of the CGST Act so as to be exigible to GST?

<u>Held:</u>

The Hon'ble Supreme Court in ***SLP (C) Diary No. 33270 of 2025 dated July 21, 2026*** held as under:

- Noted that, this Court, vide order dated May 22, 2026, has already dismissed a similar *Special Leave Petition, being SLP (C) No. 18772 of 2026*, filed by the Revenue against the judgment of the Hon'ble Bombay High Court which had followed the ratio of the Gujarat High Court.

- Observed that, the Revenue's prayer for a clarification that GST would apply to a transaction involving only sale of development rights without sale of the underlying land could not be acceded to, since, as a matter of principle, a simple dismissal at the stage of admission carries no binding effect, whereas issuing any clarification would have serious effects. Accordingly, the larger question of law was kept open.

- Held that, in view of the dismissal of the similar SLP, the instant Special Leave Petitions are dismissed and pending applications, if any, stand disposed of.

Resultantly, the judgment of the Hon'ble Gujarat High Court holding that no GST is leviable on assignment of leasehold rights of GIDC plots along with buildings constructed thereon attains finality.

<u>Our Comments:</u>

Section 7(1)(a) of the CGST Act defines "supply" to include all forms of supply of goods or services or both, made for a consideration in the course or furtherance of business. Clause 5(b) of Schedule II treats construction-related transactions as supply of service, whereas Clause 5 of Schedule III declares that "sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building" shall be treated neither as a supply of goods nor a supply of services. Further, Sr. No. 41 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 exempts the one-time upfront amount (premium/salami) payable for grant of long-term lease of industrial plots by State Government Industrial Development Corporations.

The Hon'ble Gujarat High Court, after an elaborate analysis of the definitions of "immovable property" under the General Clauses Act, 1897, the Transfer of Property Act, 1882 and the Registration Act, 1908, held that leasehold rights are nothing but benefits arising out of immovable property, and that the interest in immovable property in the form of leasehold rights cannot be said to be different from the immovable property itself. The Court drew a fine distinction between the two limbs of the transaction: while the allotment of the plot by the GIDC on charging of premium and periodical lease rent constitutes a supply of service (chargeable to NIL rate under the aforesaid exemption), the subsequent outright assignment by the lessee-assignor divesting itself of all rights in the property in favour of the assignee is nothing but a transfer of immovable property covered by Clause 5 of Schedule III, and hence outside the GST net.

The dismissal of the Revenue's SLPs brings much-needed certainty for thousands of industrial units across the country which have been saddled with demands of 18% GST on assignment of leasehold rights of plots allotted by State Industrial Development Corporations such as GIDC and MIDC. Pending show cause notices and orders on this issue would now not survive, and taxpayers who have paid GST under protest on such assignments may evaluate refund claims. The Hon'ble Bombay High Court in ***Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion) [Writ Petition No. 2145 of 2025 dated January 09, 2026]*** had further fortified the position by holding that the transfer of benefits arising out of immovable property has no nexus with the business of the assessee, and thus the essential element of supply "in the course or furtherance of business" is completely absent, and that assignment of leasehold rights cannot be classified as "other miscellaneous services" under Sr. No. 35 of Notification No. 11/2017-Central Tax (Rate).

At the same time, it is pertinent to note that the Hon'ble Supreme Court has consciously refrained from expressing any view on the taxability of a standalone transfer of development rights unaccompanied by transfer of the underlying land, and the dismissal being in limine at the admission stage, no law can be said to have been declared under Article 141 of the Constitution of India, as explained in ***Kunhayammed & Ors. v. State of Kerala & Anr. [(2000) 6 SCC 359]***. The taxability of development rights, particularly under Joint Development Agreements, remains a contested battlefield: the Hon'ble Telangana High Court in ***Prahitha Constructions Private Limited v. Union of India & Ors. [Writ Petition No. 5493 of 2020 dated February 09, 2024]*** upheld the levy of GST on transfer of development rights by a landowner to a developer under a Joint Development Agreement, whereas the Hon'ble Bombay High Court (Nagpur Bench) in ***Shrinivasa Realcon Private Limited v. Deputy Commissioner, Anti-Evasion [Writ Petition No. 7135 of 2024 dated April 08, 2025]*** held that the rights conferred on a developer under a development agreement are not covered by the reverse charge entry relating to transfer of development rights. Therefore, while the controversy on assignment of leasehold rights of industrial plots now stands settled in favour of the taxpayers, the battle on standalone development rights is likely to travel further, and transactions should be structured and documented with care.

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