



GST liability on the benefits arising out of land



Introduction

The Goods and Services Tax (GST) regime, while aiming for a unified tax structure, has encountered persistent challenges in its application to land-related rights. The inherent complexities arising from the intersection of tax and property laws have led to significant debates and inconsistencies in interpretation, creating a climate of uncertainty for stakeholders. While the sale of land and buildings is explicitly excluded under Schedule III of the CGST Act, the taxability of associated rights like leaseholds, development rights, and mining leases has remained a contentious issue, fueling litigation and compliance burdens. In this evolving landscape, the recent decision by the Gujarat High Court in **Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors.** offers a potentially significant clarification, specifically addressing the applicability of GST on the assignment of leasehold rights.

The dispute before the Gujarat High Court arose from GST demands issued on the assignment of leasehold rights for industrial plots allotted by the Gujarat Industrial Development Corporation (GIDC). The core contention of the taxpayers was that such assignments constitute a “transfer of immovable property” and should therefore fall outside



the GST ambit, drawing support from the Transfer of Property Act, 1882, and precedents under the erstwhile Service Tax regime. They argued that leasehold rights represent “benefits arising from land,” traditionally treated as transfers of immovable property. Conversely, the GST authorities maintained that the transfer of these rights constitutes a taxable “supply of services” under the CGST Act, emphasizing the intangible nature of the leasehold interest. The Gujarat High Court, however, sided with the taxpayers. It reasoned that leasehold rights extend beyond mere possession, encompassing a bundle of ownership-like rights, including the rights to possess, enjoy income, alienate, and recover ownership. Consequently, the assignment of these comprehensive rights was classified as a transfer of immovable property, thus placing it outside the scope of GST as a taxable supply.

The Gujarat High Court’s judgment carries significant implications by interpreting GST provisions within the context of established property law principles. The court meticulously examined **Section 7(1) of the CGST Act**, defining “supply,” and Schedule II, which specifically treats the renting of immovable property as a service. While the initial allotment of land by GIDC was considered a taxable supply (albeit exempt under Notification No. 12/2017-Central Tax (Rate), the court distinguished subsequent assignments of these rights. It concluded that the transfer of a 99-year lease, often akin to an outright sale in its practical implications, should be treated as a transfer of immovable property and not a service. This decision offers welcome relief to businesses, particularly in industrial sectors reliant on leasehold land, by preventing potential double taxation since stamp duty is already levied on such transfers. Furthermore, it aligns with the pre-GST Service Tax regime’s exclusion of immovable property transfers from its purview, and consequently resolves the ambiguity surrounding Input Tax Credit (ITC) claims on GST paid on such transfers, which tax officers had restrictively interpreted under **Section 17(5)(d) of the CGST Act**.

The Gujarat High Court’s ruling, while offering a specific interpretation, faces inherent challenges and counterarguments that create ongoing uncertainty. One established perspective is that the assignment of a leasehold right legally constitutes a surrender of the right to the lessor, followed by a distinct fresh grant to a third party, which fundamentally alters the nature of the supply under GST. Furthermore, the explicit exclusion of the sale of land and buildings in Schedule III, without a corresponding explicit exclusion for all “benefits arising out of land,” definitively leaves room for the interpretation that the latter remains subject to GST. The pre-existing circular from the Central Board of Indirect Taxes and Customs (CBIC) classifying tenancy rights as subject to GST establishes a clear conflict with the current ruling, which will persist unless the circular is explicitly declared **ultra vires**. Ultimately, the GST authorities’ right to appeal this decision to the Supreme Court ensures





that the definitive legal stance remains uncertain until the apex court's pronouncement. Should the Supreme Court uphold the Gujarat High Court's view, the possibility of legislative amendments to Schedule III to reverse this outcome introduces further uncertainty regarding the long-term tax treatment.

The ramifications of the Gujarat High Court's decision demonstrably extend beyond leasehold assignments, creating a clear potential influence on the taxability of other contentious land-related rights. However, the Telangana High Court's ruling in **Prahitha Construction Private Limited v. Union of India**, which definitively held the transfer of development rights as taxable (a judgment the Supreme Court declined to stay), firmly establishes a contrasting legal position. The consistent stance under the previous service tax regime by the CESTAT Chandigarh in **DLF Commercial Projects Corporation Ltd vs Commissioner of Service Tax** and the CESTAT Kolkata in **M/s Amit Metaliks Limited vs Commissioner of CGST**, classifying development rights as benefits arising from immovable property and thus exempt from service tax, underscores the certain need for a conclusive pronouncement from the Supreme Court to definitively settle this issue.

From a policy standpoint, the Gujarat High Court's ruling highlights a critical need for legislative clarity within the GST framework regarding the taxation of land-related rights. The absence of explicit provisions in Schedule III for long-term leasehold rights and similar transactions has fostered divergent interpretations and legal challenges. The GST Council should proactively address this ambiguity by refining the law to provide a consistent and uniform framework for taxing benefits and income derived from immovable property. While the current ruling may stimulate industrial development by reducing transaction costs, it also raises concerns about potential revenue implications and refund claims. An unintended consequence could be the necessity to reverse ITC under Section 17 of the CGST Act, treating leasehold assignments as exempt supplies, which could be highly contentious given the high values involved.

Conclusion

The Gujarat High Court's decision in the Gujarat Chamber of Commerce and Industry case offers a significant interpretation regarding the non-applicability of GST on the assignment of leasehold rights, providing much-needed relief and clarity to affected businesses. However, the issue of GST on benefits arising from land remains a complex and evolving area, marked by conflicting judicial opinions and potential legislative counterarguments. As the legal landscape continues to unfold, businesses must remain vigilant, closely monitoring future developments and seeking expert advice to navigate the intricacies of GST and property law,



KINGS & ALLIANCE LLP
LAW FIRM



www.knallp.com



info@knallp.com



+91 981 981 5818

until a definitive resolution emerges, ideally from the Supreme Court or through legislative amendments.

1. 2025 (1) TMI 516
 2. 2024 (2) TMI 902
 3. Appeal No. ST/60476/2018
 4. Service Tax Appeal No. 76639 of 2018-[DB]
-

