



Gujarat High Court
Gujarat Chamber of Commerce & Industry



Facts of the case

- GIDC acts as a nodal agency for development of industrial parks in state of Gujarat. GIDC acquires plots of lands, develops infrastructure and thereafter allots plots on long term lease for 99 years.
- Registered lease deed is executed by GIDC in favour of the allottee/lessee after payment of applicable stamp duty. Lease deed also permits the allottees/lessee to assign the leasehold rights and interest in the plot to any other person subject to approval of GIDC.
- The issue pertains to levy of GST on assignment of leasehold rights of the plot of land allotted on lease by GIDC and building constructed thereon by the lessee or its successor (assignor) to a third party (assignee) on payment of lump-sum consideration.



Arguments by tax payer

- Based on references to TOPA Act, General Clauses Act, Registration Act, land Acquisition Act, leasehold rights to be treated as immovable property
- Transfer of leasehold rights is not a service. Service meaning cannot include immovable property within its ambit.
- Legislature never intends to tax immovable property. Therefore meaning of land does not restrict to land per se but also include land which constitute immovable property i.e. right in land
- Transfer of leasehold rights is not in course or furtherance of business- nothing to do with business of assignor.



- Stamp duty not subsumed under GST and hence taxing land and building may be unconstitutional- 7th GST council meeting agenda

Arguments by department

- Leasehold rights with respect to immovable property are interest in immovable property.
- Interest in immovable property should be understood in context of GST Act and not other Acts which are enacted for different purposes.
- The interest in immovable property cannot be dubbed as immovable property.
- GIDC has bundle of rights such as ownership, construction, license, possession, occupation, etc. When one of such rights is transferred, it should be termed as service.



...High Court Observations

- Article 30 of the Schedule-I of the Gujarat Stamp Act, 1958, provides for same rate of stamp duty as immovable property, in case where lease is more than 98 years.
- As per S.12(3), place of supply of services in relation to immovable property includes services provided by architect, interior decorators etc. and includes any service provided by way of grant of right to use immovable property.
- Levy of GST on construction services are exclusive of 1/3rd of total amount charged for such supply which includes transfer by way of lease or sub-lease meaning.
- Therefore, even for levy of GST on construction services, value of the land by way of lease is to be excluded.



- Therefore, scope of supply would not include transfer of leasehold rights as it would be transfer of immovable property.
- Considering the settled legal position as held by the Hon'ble Supreme Court and other High Courts from time to time, it is true that any lease or letting out of a building including commercial, industrial, residential complex for business either wholly or partly would be "supply of service".
- The consideration, therefore, as premium/one time premium is a measure on which tax is to be levied, assessed and recovered.
- Therefore, when the GIDC allots the plot of land on lease of 99 years and charges premium for such allotment followed by periodical lease rent to be paid, is to be considered as supply of service.



- However, when such leasehold right is transferred by the lessee-assignor in favour of a third person-assignee by execution of deed of assignment , it would be nothing but transfer of an “immovable property”
- There are 2 transactions, which are:
 - Allotment of plot of land from GIDC- service
 - Assignment of lease by assignor- immovable property
- Agenda 2A of 5th GST council meeting proposed to impose GST on sale of immovable property. However, in 7th meeting, said decision was deferred.



- Further, GIDC had only allotted the plot of land to the lessee who constructed the building. Therefore, what is transferred by assignor is not just land but building as well.
- Hence GST will not be applicable on transfer of assignment of leasehold rights by the assignor to the assignee

THANK YOU



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