

GST UPDATES

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No GST on  
Transfer of  
Industrial  
Plot by deed  
of Assignment

Gujrat High Court In case of  
Gujarat Chamber Of Commerce And  
Industry & Ors.  
Vs  
UOI & Ors.

*In recent case of Gujarat Chamber Of Commerce And Industry & Ors. Vs UOI & Ors. Gujrat High Court held that, Assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favor of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of “immovable property” by the lessee-assignor in favour of third party-assignee.*

*As a result would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.*

Court observations.

- 1) As per the terms of the lease deed executed by GIDC, lessee can assign his interest in any lawful manner and such interest itself would be an immovable property which can be validly assigned.
- 2) Schedule-II of the GST Act provides for activities or transactions to be treated either as supply of goods or supply of services. As per clause 5(a) of Schedule II renting of immovable property is to be treated as supply of services.
- 3) Even if the assignment of leasehold rights on the land on charge of one time upfront amount by the GIDC for allotment of plot of land to the industrial unit is covered within the scope of “supply of services” as per clause 5(a) of the Schedule II read with section 7(1) of the GST Act, charging of one time upfront amount as premium by the GIDC would attract Nil rate of tax as per the Notification no.12/2017- Central Tax (Rate) dated 28.06.2017.
- 4) As per the lease deed executed by GIDC in favour of industrial unit for allotment of plot of land, the industrial unit is entitled to transfer such leasehold land in favour of any third party with the prior permission of the GIDC on payment of transfer charges as prescribed by GIDC.
- 5) When the lessee-assignor transfers absolute right by way of sale of leasehold rights in favour of the assignee, the same shall be transfer of “immovable property” as leasehold rights is nothing but benefits arising out of immovable property which according to the definition contained in other statutes would be “immovable property”.
- 6) Section 7 of the GST Act which provides for the scope of supply of good or services or both for the purpose of the GST Act includes all forms of supply of goods or services or both by any form such as transfer, sale, barter, exchange, license, rental,

lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

- 7) Assignment of leasehold rights would be covered by sale, transfer, exchange for a consideration by a person.
- 8) It would also be required to be considered as to whether such sale, transfer, exchange for a consideration by a person is in course or furtherance of business or not because once the transaction of assignment of leasehold rights takes place, business would be transferred by assignor in favour of the assignee.
- 9) As nature of transaction in facts of the case is outright assignment resulting into sale/transfer of the leasehold rights in favour of assignee by lessee/assignor for a consideration would be covered by clause 5 of Schedule III which provides that sale of land and building shall not be considered as supply of services. Therefore, it cannot be said that assignment of the outright leasehold rights would be a service or transferring of leasehold right.
- 10) As the GST Act is nothing but a levy of tax upon all the indirect taxes which were levied under different legislation, it would be germane to refer to definition of “service” as provided in section 2(102) of the GST Act to mean as anything other than goods, money and securities. Considering such definition in juxtaposition to provisions of section 65B(44) of the Finance Act, 1944, there was specific exclusion of transfer of title in immovable property from definition of ‘service’ itself which clearly shows that there was no intention of the legislature to impose tax on transfer of immovable property.

Conclusion of Court

Assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of “immovable property” by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.

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