

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 3596 of 2025**

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DHIRAJ CAN CO. PVT. LTD.
Versus
THE UNION OF INDIA & ORS.

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1
MS. SHRUNJAL SHAH, ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 2,3,4
MR ANKIT SHAH(6371) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 04/07/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1 The present petition preferred under Articles 226 and 227 of the Constitution of India assails the correctness and validity of order dated 29.08.2024 under Sec.73 of the State Goods & Service Tax Act (hereinafter referred to as 'the Act' for short), whereby, respondent No.4 (hereinafter referred to as 'the respondent' for short) has confirmed liability considering the assignment of lease hold rights by the petitioner in favour of



M/s. Acquire Chemicals as supply of service u/s. 1-1(A) of the Act and classified under heading 9972.

2 The brief facts leading to filing of the present petition is that Gujarat Industrial Development Corporation (hereinafter referred to as 'GIDC'), which is established under the Gujarat Industrial Development Act, 1962, acts as a nodal agency of Government of Gujarat for the purpose of development of industrial areas / estates. GIDC gives lands to industries on lease, generally for a period of 99 days. GIDC issues an allotment letter to the industry desiring to take plots developed by the GIDC. Allotment letter would set various terms and conditions on which the allotment is being made, including the method and manner in which premium is required to be paid.



2.1 The petitioner was allotted industrial plot No. 7901/1-2B admeasuring 2687.54 sq.mtrs vide Office Order dated 13.10.1982. The Lease Deed/ Conveyance Deed was executed on 25.10.1982. The petitioner had applied to GIDC for transfer of the plot in question to one M/s. Acquire Chemicals vide application dated 03.03.2020. The application was allowed and an approval was granted vide order dated 16.03.2020.

2.2 Subsequent to the order dated 16.03.2020, the petitioner and M/s. Acquire Chemicals executed a Deed of Assignment on 30.06.2020, pursuant to which the petitioner received consideration of Rs.75 lakhs in the year 2019-2020.

2.3 It is the case of the petitioner that it



has neither charged nor recovered any GST from M/s. Acquire Chemicals for the consideration paid to the petitioner under Deed of Assignment dated 16.03.2020. However, petitioner was served with summons dated 24.05.2021 under Sec.17(1) of the Act. Thereafter, the petitioner was served with a show-cause notice in FORM DRC-01 on 30.05.2024 which inter alia demanded Rs.13,50,000/- as GST on transfer of lease hold rights in favour of M/s. Acquire Chemicals on the premise that execution deed and subsequent lease is considered as a taxable value of supply of services.

2.4 Subsequent to the show-cause notice, the petitioner was served with order in FORM GST DRC-07 on 29.08.2024 which inter alia confirmed the proposal made in show-cause



notice dated 30.05.2024. The show-cause notice as well as the order dated 29.08.2024 are subject matter of challenge of the present writ petition.

3 Mr.Dhaval Shah, learned advocate for the petitioner has submitted that the issue is no more *res integra* pursuant to the decision of this Court in the case of **Gujarat Chamber of Commerce, Industries & Ors Vs. Union of India & Ors.**, rendered in Special Civil Application No. 11345 of 2023.

4 Ms.Shrunjal Shah, learned Assistant Government Pleader was unable to controvert the proposition that the issue is now covered by the decision of **Gujarat Chamber of Commerce (supra)** .

5 This Court, in the case of **Gujarat Chamber**



of Commerce (supra) , held as under:

"51. This submission seems to be very attractive at the first blush, however, there are two transactions, one when the GIDC allots plot of land along with right to occupy, right to construct, right to possess on long term lease basis, it is nothing but supply of service as right of ownership of plot in question remains with the GIDC which will revert back on expiry of lease period whereas transaction of sale and transfer of leasehold rights by the lessee- assignor in favour of assignee divest lessee-assignor of all the absolute rights in the property. Therefore, interest in the immovable property in form of leasehold rights cannot be said to be different than the immovable property itself. Section 2(119) of the GST Act defines "works contract" being a contract for building, construction, fabrication, completion, erection etc., of any immovable property wherein transfer of property in goods is involved in execution of such contract. Therefore, there is no reference to the interest in immovable property in works contract. Similarly section 17(5)(c) and (d) of the GST Act refers to the immovable property regarding works contract services and goods or services both received by taxable person for construction of an immovable property. Section 12 of the Integrated Goods and Service Tax Act, 2017 (for short 'the IGST Act') refers to place of supply of services in reference to section 2(120) of the GST Act which applies to the IGST Act



also and as per sub-section(3) of section 12, 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 or for carrying out or coordination of construction work by way of lodging accommodation by a hotel, by way of accommodation in any immovable property for organizing marriage or any services ancillary to the services referred to in other clauses, shall be the location at which the immovable property is located.

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61. A bare perusal of the above Statement of Object and Reasons, clearly indicates the legislative intention to subsume all the existing indirect taxes in a single tax called Goods and Services Tax to be levied on supply of goods or services or both at each stage of supply chain by converging any tax that was being levied on the supply of goods or services to be converged in Goods and Service tax to be levied under the GST Act.

62. In view of the legislative intention, 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. Therefore, 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". Therefore, reading the provisions of the Act together and harmoniously to understand the nature of levy and the object and purpose of its imposition, no activity of the nature mentioned in the inclusive provision of section 7 of the GST Act can be left out of the net of tax. Simultaneously, the provisions of section 7 has to be read in terms of substantive provision and Schedules which treats the activity as supply of service, particularly, in relation to land and building and includes a lease. 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 in relation to land and building read with clause 5(a) of Schedule-II which specifically provides that renting of immovable property shall be treated as supply of services.

63. 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" in view of the settled legal position to the effect that lease for 99 years or for a long term in consideration of premium paid is as much an alienation as sale or mortgage.

64. Corpus Juris Secundum relied upon on behalf of the petitioner defines the word "property" which depends on the context with which it is used. Firstly, it is applied to the external things that are the objects of rights or estates that is things that are the object of the ownership and secondly, it is applied to the rights or estates that a person may acquire in or to things. Therefore, in strict legal parlance "property" is used to designate a right of ownership or an aggregate of rights that are guaranteed and protected by the Government and has been defined as the right of any person to possess, use, enjoy and dispose of a thing and to exclude everyone else from interfering with it and more succinctly, it has been defined as any vested right of any value which refers to both the actual physical object and various incorporeal ownership rights in the object i.e. plot of land and building thereon in facts of the case as the right to possess, to enjoy the income from, to alienate or to recover ownership from one who has obtained title to the object.

65. Under the GST Act and IGST Act relating to Rate of Tax, Exemption, Reverse Charge Scheme and other matters



concerning supply of services are covered by notifications issued in exercise of powers conferred by subsections (1), (3) and (4) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the GST Act on the basis of recommendations of the GST Council.

66. As per the notification no. 11/2017, lease of property is included in Heading No. 9954 relating to construction services which provides rates of GST involving transfer of land or undivided share of land, as the case may be, and value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and value of such transfer of land or undivided share of land shall be deemed to be 1/3rd of the total amount charged for such supply and total amount means sum total of consideration charged for the aforesaid service and amount charged for transfer of land or undivided share of land, as the case may be, including by way of lease or sublease. Therefore, 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 thereby even for levy of GST on construction services, value of the land by way of lease is to be excluded considering such value being the value of immovable property which is transferred.

67. In such circumstances, the contention



raised on behalf of the petitioner that leasehold rights are nothing but interest in immovable property as per the provision of section 105 read with section 108(j) of the Transfer of Property Act constituting absolute transfer of right in such property because transfer of such leasehold right extinguishes the estate of the transferor-lessee-assignor in the immovable property and all legal relationships with lessor-GIDC are severed and third party-assignee becomes lessee liable for obligation under the assignment deed vis-à-vis the lessor-GIDC. As the assignor transfers leasehold rights after receiving the consideration as determined on the basis of value of such leasehold rights, such transaction therefore would of an "immovable property" and cannot be considered as "supply of services" as held by Hon'ble Apex Court in case of Gopal Saran v. Satya Narayana reported in (1989) 3 Supreme Court Cases 56 wherein definition of "assignment" as stated in Black's Law Dictionary, Special Deluxe Edition page 106, is referred to as assignment means "is a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein". It has further been held that assignment would include "The transfer by a party of all its rights to some kind of property, usually intangible property such as rights in lease, mortgage, agreement of sale or a partnership." Considering such definition of assignment, assignment of leasehold rights is also subject to levy

of stamp duty being transfer of "immovable property".

68. The Hon'ble Apex Court in case of Byramjee Jeejeebhoy (P) Ltd vs State Of Maharashtra reported in AIR 1965 Supreme Court 590 while holding as to what a lease contemplates has observed that a demise or a transfer of a right to enjoy land for a term or in perpetuity in consideration of a price paid or promised or services or other things of value to be rendered periodically or on specified occasions to the transferor. The words "transfer of right to enjoy such property" indicates that all the rights of ownership are not transferred. Therefore, the significance of those words as indicative of the limited estate transfer is apparent in contrasted which flows in section 54 where a sale is defined as "transfer of ownership in exchange for a price". Therefore, while assignment conveys the whole interest in the property which passes to the assignee along with rights and liability to sue and be sued upon the covenants in the original lease.

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73. Therefore, the scope of "supply of services" would not include transfer of leasehold rights as supply of service as it would be transfer of "immovable property" being a benefit arising out of immovable property consisting of land and building.

74. Clause 5 of Schedule III of the GST



Act clearly provides that sale of land cannot to be treated as supply of goods or services. Therefore, leasehold rights which are to be considered as sale of land would be out of purview of the provisions of scope of supply as per section 7 of the GST Act.

75. 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. Under the Service Tax Act, even the development rights which are the benefits arising from land were not liable to tax. Leasehold right is in fact a greater right and interest in land than development rights and the principle under the service tax regime would therefore, continue even to apply under the GST regime as the object of introduction of GST is to subsume the existing taxes.

76. It would also be necessary to refer to the Minutes of the meeting of 5th GST Council to the Agenda 2A which clearly notes that service tax was not leviable on

transfer of immovable property and a specific proposal was made to impose GST on sale of immovable property on the ground that there was no constitutional embargo for imposing such tax and the stamp duty was leviable on a different aspect. 7th GST Council meeting held on 22nd and 23rd December, 2016 after a detailed discussion decided to defer imposition of tax on land and building and thereafter, clause 5 of Schedule III of the GST Act clearly excludes sale of land and building which fortifies the intention of the GST Council not to impose tax on transfer of immovable property continuing the underlying object of erstwhile service tax regime.

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78. Moreover, in the facts of the various cases, GIDC had only allotted the plot of land to the lessee who constructed the building and developed the land to run the business or industry for which such plot of land was allotted. Therefore, what is assigned by the lessee/assignor to the assignee for a consideration is not only the land allotted by GIDC on lease but the entire land along with building thereon which was constructed on such land. The entire land and building is therefore, transferred along with leasehold rights and interest in land which is a capital asset in form of an immovable property and the lessee/assignor earned benefits out of land by way of constructing and operating factory building/shed which constitutes a "profit a pendre" which is also an

immovable property and therefore, would not be subject to tax under the GST Act.

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81. *Therefore, the contention of the respondents that by excluding only sale of land and building as per Schedule-III would not amount to transfer of leasehold rights as the interest in immovable property being an intangible form would be covered by the scope of supply of service, is not tenable as transaction of assignment is nothing but absolute transfer of right and interest arising out of the land which would amount to transfer/sale of immovable property which cannot be said to be "service" as contemplated under the provisions of GST Act. Moreover, assignment/transfer of rights would be out of scope of supply of service.*

82. *In view of above discussion and analysis of the provisions of section 7 read in context of the facts of the case, the decisions relied upon on behalf of the respondent are required to be dealt in support of the proposition that interest in immovable property cannot be considered as an immovable property as it is not envisaged as such in the GST Act, as immovable property is nothing but bundle of rights and right to give such property on lease is one of such rights and further transfer of the right to occupy or possess will continue to remain as supply of service which character will not change merely because lessee of GIDC affects*



absolute transfer thereof in favor of the assignee leaving no right whatsoever in respect of such leasehold land and building.

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83. In view of foregoing reasons, 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.

84. In view of above, question of utilisation of input tax credit to discharge the liability of GST on such transaction of assignment would not arise.

85. The petitions accordingly succeed and impugned show cause notices and orders in original or appeal as the case may be, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."



6 This Court has already decided that assignment by sale and transfer of lease hold right 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 such circumstances, the provision of Sec.7(1)(a) of the Act providing for scope of supply read with Clause 5(b) of Schedule 2 and Clause 5 of Schedule 3 would not be applicable to such transaction of assignment of lease hold rights and the same would not be subject to levy of GST as provided under Sec.9 of the Act.

8 In view of the same, the present petition succeeds. The impugned order being Ref No. ZD240824100409K dated 29.08.2024 passed under



Sec.73 and Form GST DRC-07 dated 29.08.2024
issued by respondent No.5 and Show-cause
Notice FORM GST DRC-01 dated 30.05.2024 are
hereby quashed and set aside with no orders as
to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

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