
GST IMPLICATIONS ON TRANSFER OR ASSIGNMENT OF LEASEHOLD RIGHTS

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ABSTRACT

The transaction pertaining to sale of land and buildings have been excluded from the purview of Goods and Service Tax (“GST”) laws in terms of Paragraph 5 of Schedule III of the Central Goods and Service Tax Act, 2017 (“CGST Act”). However, whether interests in immovable property such as transfer of the leasehold rights or development rights in land which are mainly benefits arising out of immovable property will be covered under the aforesaid exclusion as “sale of land” is highly debatable issue. In view of the tax Department, only specific exclusion is sale of land and thus, these benefits arising out of land cannot be automatically excluded. Further, in taxpayers’ view, such benefits are nothing but qualify as “immovable property” as they arise out of land. Thus, these rights would also be covered within the exclusion clause and hence, no GST can be levied on such transfer of leasehold right etc.

This controversy of taxability of leasehold rights has currently been resolved by the Hon’ble Gujarat High Court in *Gujarat Chambers of Commerce & Industry & Ors. v. Union of India & Ors.*, 2025-VIL-21-Guj (“GIDC Case”). In this article, the authors have attempted to examine the position of law with respect to taxability of leasehold rights and development rights in various tax legislations as well as under GST laws and whether, the view accorded in the *GIDC case*, can be plainly adopted by the taxpayers or a cautionary approach should be preferred in the long run.

I. INTRODUCTION

Taxability of leasehold rights is a very contested issue in Goods and Service Tax laws (“GST”) in India. The taxpayers view such transfer of the leasehold rights as benefits arising out of immovable property and thus, outside the ambit of GST, however, the Department opines that the transaction is taxable as the same is supply of service under GST.

The recent decision in the case of *Gujarat Chambers of Commerce & Industry & Ors. v. Union of India & Ors.*,¹ (“GIDC Case”) has addressed the issue at length and certainly shed light on the vexed issue of taxability of assignment of leasehold rights under GST. The Hon’ble High Court has opined that assignment of leasehold rights are not taxable under GST as such transactions are in nature of transfer of interest in immovable property and hence, outside the purview of GST laws in terms of Paragraph 5 of Schedule III of the CGST Act. Whilst the decision has given sound reasonings to reach to the conclusion of non-taxability of such transactions, however, given the huge amounts of consideration involved in such transfers, it would be worthwhile to the nature of these rights and legal position pertaining to transfer of these rights and interest in immovable property under GST as well as under other laws. In the present article, the author has attempted to examine the controversy of taxability of lease hold rights and development rights under GST as well as the legislative intent of exclusion of sale of land and buildings from GST.

II. “GIDC CASE” AND KEY OBSERVATIONS MADE IN THE DECISION

In this Case, Gujarat Industrial Development Corporation (“GIDC”), a nodal agency under the Gujarat Industrial Development Act, 1962, was engaged in development of industrial estates by acquiring land and creating necessary infrastructure. It allotted plots to industrial entities on 99-year leases upon payment of upfront lease premium, as per terms detailed in allotment letters, licensing agreements, and subsequently executed lease deeds. These lease deeds permitted lessees to assign their leasehold rights to third parties with GIDC’s approval. Post implementation of GST laws, the GST authorities issued show-cause notices to entities i.e. lessees assigning leasehold rights in GIDC plots, proposing to levy GST @ 18% on such transactions.

¹ *Gujarat Chamber of Commerce & Indus. v. Union of India*, (2025) 26 Centax 150 (Guj.).

The affected parties approached High Court and the Gujarat Chamber of Commerce and Industry, representing such parties, argued that GST should not apply to such assignments, emphasizing that the transaction pertains to land and is not a service. Alternatively, they sought clarification on the eligibility for Input Tax Credit (“ITC”) if tax is paid on the transaction. Thus, the issue for consideration before Hon’ble High Court was whether GST is leviable on the assignment of leasehold rights in plots of land allotted by GIDC and any buildings constructed thereon by lessees or their successors, by treating them as a “supply of service” or the same is a transaction of sale pertaining to immovable property and outside the scope of GST. The tax department contended that there is no exclusion to assignment of leasehold rights under GST and only sale of land and building are covered in Schedule III to the CGST Act which would be treated neither as supply of goods nor as supply of services.

The Court held that assignment of leasehold right is benefit arising out of land and is not liable to GST. The key observations made by the Court are as follows:

1. Immovable property is not defined under the CGST Act, however, the same is defined in the other enactments and it includes benefits arising out of land. *[Para 40]*
2. The petitioner has transferred leasehold rights which is over and above the actual physical plot of land and building, encompasses incorporeal ownership right in such land and building such as the right to possess, to enjoy the income from, to alienate, or to recover ownership of such right from one who has improperly obtained the title. *[Para 41]*
3. 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. *[Para 51]*
4. 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”. *[Para 52]*
5. Accordingly, it was held that transfer of leasehold rights is nothing but transfer of immovable property.

III. POSITION PRIOR TO GIDC CASE UNDER GST

Prior to this ruling, the advance rulings had opined that the transfer of leasehold right would be taxable. The view that supported taxability relied upon provisions and circulars such as section 7 of the CGST Act, which is the charging section, encompasses all supplies of goods and services, including lease and rental activities, making them subject to GST. Further, Schedule II of the CGST Act deems lease or rental of land or immovable property as a 'supply of services', attracting GST. This Schedule also deems 'agreeing to do an act' as a 'supply of service', attracting GST. Also, *CBIC Circular No. 44/18/2018-CGST* clarifies that the assignment or transfer of leasehold rights is indeed a 'supply of service' subject to GST payment. The circular emphasizes that registration requirements and stamp duty payments do not exempt these transactions from GST liability. It also clearly states that these transactions do not qualify as 'sale of land' under Schedule III to the CGST Act (which entails transactions on which no GST is applicable). *In re: Vilas Chandanmal Gandhi*² the term "land" used in Schedule III of the CGST Act is to be interpreted strictly and means only the sale of land and does not include benefits arising out of a land.

Advance Rulings have thus, consistently classified assignment of leasehold rights as 'supply of service' liable to GST.³ The assignment transactions were seen as consideration for agreeing to transfer the leasehold rights to the assignee and accordingly opined to be subjected to GST in terms of Schedule II to the CGST Act.

In *Builders Association of Navi Mumbai v. Union of India*⁴, the Hon'ble Bombay High Court has held that long term lease transactions, irrespective of the duration of lease, will be subject to GST. This judgment has been accepted by the Hon'ble Supreme Court and challenge to the same, via the SLP route, was rejected. Even under service tax laws such long-term lease transactions were considered as being subject to service tax, irrespective of the duration of lease period.

Thus, the position of law in the erstwhile regime and also advance rulings under GST is not aligned with the law laid down in GIDC decision that assignment of leasehold rights is 'sale of

² *In re: Vilas Chandanmal Gandhi* 2020 (42) G.S.T.L. 522 (App. A.A.R. - GST - Mah.)

³ *In re : General Motors India Pvt. Ltd.*, (2025) 29 Centax 355 (A.A.R. - GST - Mah.); *In Re Fena Pvt. Ltd.* (2024) 15 Centax 365 (A.A.R. - GST - U.P.)

⁴ *Builders Association of Navi Mumbai v. Union of India* (2018) 92 taxmann.com 134/67

land', then it is exempt from GST under Schedule III. Further, it will be apposite here to refer to the position under Income Tax Laws.

IV. POSITION OF LAW UNDER INCOME TAX WITH RESPECT TO LEASEHOLD RIGHTS

The Central Board of Direct Taxes had issued a Circular No. 35/2016 clarifying that long terms lease transactions are to be treated as 'deemed sale' under the Income Tax Act. Accordingly, no Tax Deducted at Source ("TDS") is required to be deducted, under Section 194-I, on one time premium payable for such transactions.

Hon'ble Supreme Court judgment in the case of *Commissioner of Income Tax v. M/s. Poddar Cements, Tax Reference Case No. 9-10 of 1986*, has been held that considering ground realities person holding lease rights over a long period of time will be considered as 'owner', and income arising from such property will be taxed as 'income from house property'. Thus, in terms of position of law propounded under income tax, assignment of leasehold rights may qualify as 'sale of land', supporting the view of GST exemption.

Further, since the nature of transfer or assignment of leasehold rights is akin to transfer of development rights, it would be worthwhile to examine the decisions on this issue:

V. JUDICIAL DECISIONS ON THE TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS

The issue with respect to transfer of development rights was dealt by the Hon'ble High court in *Prahitha Construction Pvt. Ltd. v. UOI*⁵ relied on the agreement to hold that there is no transfer of ownership or title rights by transfer of development rights and hence, transfer of development rights cannot be brought within the purview of Schedule III of the CGST Act. Accordingly, it was held that GST is payable on such transfer of development rights. Against this decision an appeal is pending before the Hon'ble Supreme Court. Similarly, *In Re: Experion Developers Pvt. Ltd.*,⁶ it was held that the exclusion in Schedule III covers only sale of land and not the benefits arising out of land and therefore, GST is payable on transfer of development rights.

⁵ *Prahitha Construction Pvt. Ltd. v. UOI*, (2024) 15 Centax 295 (Telangana)

⁶ *In Re: Experion Developers Pvt. Ltd.*, 2021 (48) G.S.T.L. 56 (A.A.R. - GST - Haryana)

VI. CONCLUSION

The question whether the transfer of leasehold rights constitutes a taxable supply under the GST regime remains a grey area, notwithstanding the decision of Hon'ble Gujarat High Court in GIDC in favour of taxpayers. As analysed in this article, substantial jurisprudential arguments exist on both sides of this interpretational controversy, reflecting the inherent complexity in applying the statutory definition of "supply" to evolving commercial transactions. The ultimate resolution of this issue awaits authoritative outcome by the Hon'ble Supreme Court of India. Pending such definitive determination, taxpayers may adopt the prudent course of discharging GST liability under protest whilst preserving their right to seek refund, thereby balancing compliance obligations with legitimate legal contestation in an area characterized by interpretational ambiguity.