GST ON LEASEHOLD RIGHTS: TAXABILITY OF GRANT, ASSIGNMENT AND TRANSFER UNDER THE GST REGIME

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ABSTRACT

The Goods and Services Tax regime has brought within its ambit a wide range of transactions concerning immovable property, including leasing, tenancy, licensing and other arrangements relating to the right to use or occupy land and buildings. However, the question whether every transaction involving leasehold rights constitutes a taxable supply of service has generated considerable litigation. The controversy assumes particular significance in the case of long-term industrial leases granted by State Industrial Development Corporations, where an original lessee subsequently assigns its entire leasehold interest to a third party for consideration. The Gujarat High Court, in *Gujarat Chamber of Commerce and Industry v. Union of India*, held that an outright assignment of long-term leasehold rights, together with the building standing on the land, constitutes a transfer of benefits arising from immovable property and is not a taxable supply under GST. This position was subsequently followed in *Life Sciences Chemicals* and by the Bombay High Court in *Aerocom Cushions*. In 2026, the Supreme Court dismissed the Revenue's challenge to the Gujarat Chamber judgment. This article examines the statutory framework governing leasehold transactions under the CGST Act, the distinction between grant of lease and assignment of leasehold rights, the judicial reasoning adopted by the Courts, and the practical implications for taxpayers. It concludes with certain suggestions for achieving greater certainty in the taxation of transactions involving immovable property.

Keywords: GST; Leasehold Rights; Assignment; Immovable Property; Supply of Services.

1. Introduction

The introduction of the Goods and Services Tax ("GST") was accompanied by a deliberate expansion of the concept of "supply". Unlike the traditional indirect tax structure, which separately taxed goods and services through different enactments, GST was designed as a comprehensive levy covering supplies of goods and services. The broad statutory definition of "supply" under Section 7 of the Central Goods and Services Tax Act, 2017 ("CGST Act") consequently brought several transactions involving immovable property within the GST framework.

One such area is the taxation of lease transactions.

The GST legislation expressly recognises certain transactions concerning land and buildings as supplies of services. In particular, Entry 2(a) of Schedule II treats a lease, tenancy, easement, licence to occupy land and similar arrangements as a supply of services. At the same time, Schedule III excludes certain transactions relating to immovable property from the very concept of supply, most importantly the sale of land and, subject to specified conditions, the sale of a building.

This statutory scheme creates an important distinction. While the **grant of a lease** may constitute a supply of service, it does not necessarily follow that the **subsequent assignment of the entire leasehold interest by the lessee to another person** is also a supply of service.

The distinction became particularly significant in the case of industrial plots allotted by government industrial development corporations. Such plots are frequently allotted for very long periods—often 95 or 99 years. The lessee is permitted, subject to the conditions of the allotment and approval of the development corporation, to transfer or assign its leasehold interest to another person. In many cases, the lessee also constructs a building or factory on the leased land and subsequently transfers the entire leasehold interest along with the building for a lump-sum consideration.

The GST authorities, in a number of cases, treated such transactions as taxable supplies of services and sought to levy GST, generally at 18 percent. The taxpayers, on the other hand, contended that an outright assignment of the entire leasehold interest was effectively a transfer of an interest in immovable property and could not be equated with the provision of a service.

The controversy received detailed consideration from the Gujarat High Court in *Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors.*, decided on 3 January 2025. The Court held that assignment of leasehold rights in the circumstances before it constituted assignment, sale or transfer of benefits arising out of immovable property and was not liable to GST.

The importance of the decision increased substantially when the Supreme Court, in May 2026 and subsequently on 21 July 2026, dismissed Special Leave Petitions filed by the Revenue against the Gujarat High Court decision. The July 2026 order records that a similar SLP had already been dismissed on 22 May 2026 and, on that basis, the connected SLPs were also dismissed.

The issue, therefore, is no longer merely an isolated controversy concerning GIDC plots. It raises a broader question concerning the interface between GST law and the law relating to immovable property: **when does a transaction involving leasehold rights remain a supply of service, and when does it amount to a transfer of an interest or benefit arising from immovable property outside the scope of GST?**

2. Statutory Framework under the GST Law

2.1. Section 7 – Scope of Supply

Section 7 of the CGST Act constitutes the starting point for determining GST liability. The charging provision under Section 9 operates on taxable supplies, and therefore a transaction must first satisfy the statutory concept of "supply".

Section 7(1)(a), broadly stated, covers forms of supply of goods or services such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for consideration by a person in the course or furtherance of business.

The provision is intentionally broad. However, the breadth of Section 7 cannot be considered in isolation. It has to be read together with Section 7(2), Schedule II and Schedule III.

The crucial question in leasehold-right cases is consequently not merely whether money has changed hands. The nature and legal character of the underlying transaction must

first be identified.

2.2. Schedule II – Lease as Supply of Service

Schedule II identifies certain activities as supplies of goods or services.

Paragraph 2 of Schedule II deals with land and buildings. It includes lease, tenancy, easement, licence to occupy land and similar arrangements as supplies of services.

This provision explains why GST is ordinarily attracted on rent or lease consideration in appropriate circumstances. The law recognises the commercial exploitation of the right to use or occupy property as a service transaction.

However, an assignment of leasehold rights presents a different legal situation.

In an ordinary lease, the lessor retains the reversionary interest in the property. The lessee receives the right to enjoy the property for the agreed period, while the ultimate title and reversion remain with the lessor.

In an outright assignment, however, the original lessee may divest itself completely of its rights under the lease and the incoming assignee steps into the position of the original lessee.

This distinction became central to the reasoning of the Gujarat High Court.

2.3. Schedule III – Transactions outside the Scope of Supply

Schedule III identifies activities which are treated neither as a supply of goods nor as a supply of services.

Paragraph 5 of Schedule III excludes the sale of land and, subject to paragraph 5(b) of Schedule II, the sale of a building from the scope of supply.

Therefore, the GST legislation itself recognises that certain transactions involving immovable property are outside the GST net.

The controversy concerning leasehold rights essentially required the Courts to determine whether an outright assignment of leasehold rights is properly characterised

as a service transaction or as a transfer of an interest or benefit arising from immovable property.

3. Grant of Lease and Assignment of Leasehold Rights: The Fundamental Distinction

The most important principle emerging from the judicial decisions is that **grant of lease and assignment of an existing leasehold interest are not necessarily the same transaction for GST purposes**.

Where a State Industrial Development Corporation grants a plot to an industrial entity under a long-term lease, the transaction creates a leasehold relationship between the development corporation and the allottee. Depending upon the statutory framework and applicable exemption notification, GST consequences may arise in relation to the original grant or lease.

The position changes when the original lessee subsequently transfers its entire leasehold rights to another person.

For example:

A government industrial development corporation grants Plot A to Company X for 99 years. Company X constructs a factory on the plot. Five years later, Company X assigns its entire leasehold interest, together with the factory, to Company Y for a lump-sum consideration, with the prior approval of the development corporation.

The transaction between the development corporation and Company X and the subsequent transaction between Company X and Company Y are legally distinct.

The latter is not necessarily a fresh lease granted by the development corporation. Rather, Company Y steps into the shoes of Company X and acquires the rights that Company X held under the existing lease.

This distinction was expressly recognised by the Gujarat High Court in *Gujarat Chamber of Commerce and Industry*.

4. Gujarat Chamber of Commerce and Industry: The Turning Point

4.1. Facts and Background

The Gujarat Industrial Development Corporation ("GIDC") develops industrial estates

and allots industrial plots to businesses under long-term lease arrangements. The leases may extend for several decades, commonly 99 years, and permit assignment of leasehold rights subject to specified conditions and approval of GIDC.

After the introduction of GST, the tax authorities initiated proceedings concerning transactions where lessees assigned their leasehold rights along with buildings constructed on the plots to third-party assignees for lump-sum consideration.

The Revenue's position was that the assignment constituted a taxable supply of service under Section 7 of the CGST Act, read with the relevant provisions of Schedule II. GST was sought to be levied on the consideration received by the original lessee.

The petitioners challenged this position before the Gujarat High Court.

The central question was whether assignment of leasehold rights in the land, along with the building standing on it, amounted to a taxable supply of service or a transfer of immovable property outside the scope of GST.

4.2. Nature of Leasehold Rights

The Gujarat High Court undertook a detailed examination of the legal nature of leasehold rights by referring to the Transfer of Property Act, the General Clauses Act, the Registration Act and other relevant laws.

The Court considered the legal character of a long-term lease and the rights acquired by the lessee.

The Court ultimately concluded that an assignment by sale and transfer of leasehold rights in a GIDC plot to a third-party assignee for consideration amounts to an assignment, sale or transfer of benefits arising out of immovable property.

The Court observed that the incoming assignee becomes the lessee in place of the original allottee-lessee.

The significance of the judgment lies in the Court's focus on the substance and legal character of **the rights transferred**, rather than merely on the nomenclature used by the parties.

4.3. Assignment versus Service

The Court rejected the proposition that every transaction involving a leasehold right necessarily constitutes a service.

An outright assignment involves divestment of the assignor's rights. The original lessee ceases to enjoy the leasehold interest and the assignee takes over those rights.

This is fundamentally different from a transaction where the owner or lessor continues to hold the property and merely grants another person the right to use or enjoy it.

Thus, a lease, tenancy or licence may constitute a supply of service, while an outright assignment of the entire leasehold interest may constitute a transfer of an interest in immovable property.

The Gujarat High Court accordingly held that the relevant provisions of Section 7(1)(a), read with the applicable provisions of Schedule II and Schedule III, did not render the transaction taxable under Section 9.

5. Why the Characterisation of the Transaction Matters

The GST consequences depend substantially upon the character of the transaction.

Consider the following broad categories:

Nature of transaction	**Broad legal character**	**GST implication**
Grant of lease by owner/lessor	Right to use/enjoy property	Generally capable of being a supply of service
Periodic rent under lease	Consideration for use/enjoyment	Generally taxable subject to applicable exemption
Sub-lease retaining reversionary interest	Grant of right to enjoy property	May constitute supply of service
Outright assignment of entire leasehold interest	Transfer of leasehold interest/benefit in immovable property	Judicially held outside GST in the cases discussed
Assignment of leasehold rights	Transfer of interest/benefit	Held outside GST in *Gujarat*

Nature of transaction	**Broad legal character**	**GST implication**
along with completed building	in immovable property	*Chamber*
Transfer of only a separate contractual/development right	Requires independent examination	Cannot automatically be treated as equivalent to assignment of leasehold rights

The table demonstrates why a blanket statement that "leasehold rights are taxable" or "leasehold rights are not taxable" would be legally inaccurate.

The correct question is: **what exactly is being transferred?**

6. Life Sciences Chemicals: Application of the Gujarat Chamber Principle

The Gujarat High Court subsequently applied the principles laid down in *Gujarat Chamber of Commerce and Industry* in *M/s Life Sciences Chemicals v. Union of India & Ors.*

In that matter, the dispute concerned transfer of leasehold rights in an industrial plot. The tax authorities sought to recover GST at 18 percent on the consideration received for the transfer.

The taxpayer argued that the transaction was effectively in the nature of a sale of land and therefore fell outside the scope of supply under Schedule III.

The Gujarat High Court applied its earlier decision in *Gujarat Chamber of Commerce and Industry* and held that the assignment of leasehold rights in the circumstances of the case was not subject to GST. The Court also quashed the consequential demand of tax, interest and penalty.

The significance of *Life Sciences Chemicals* is that it demonstrated that the principle in *Gujarat Chamber* was not confined merely to the exact factual configuration of the original batch of petitions.

The Gujarat High Court subsequently followed the same reasoning in other cases concerning assignment of leasehold rights.

This has contributed to the emergence of a consistent line of judicial authority within Gujarat.

7. Aerocom Cushions: Bombay High Court Follows the Gujarat View

The issue subsequently came before the Bombay High Court, Nagpur Bench, in *Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur*.

The petitioner had been allotted an industrial plot by the Maharashtra Industrial Development Corporation ("MIDC") under a long-term lease. The petitioner subsequently assigned its leasehold rights, along with the factory building constructed on the plot, to a third party after obtaining the requisite consent of MIDC and paying the prescribed transfer premium.

The Revenue treated the transaction as a taxable supply of service and issued proceedings under Section 74 of the CGST Act.

The Bombay High Court relied upon the reasoning of the Gujarat High Court in *Gujarat Chamber of Commerce and Industry*.

The Court emphasised that the petitioner's entire leasehold rights had been transferred and that the transaction related to the transfer of benefits arising from immovable property.

The Court also considered the classification adopted by the Revenue and observed that the transaction could not simply be placed under a residual category of miscellaneous services merely because consideration had been received.

The Court ultimately held that the assignment did not constitute a supply of service and quashed the proceedings.

The decision is particularly important because it demonstrates judicial acceptance of the principle beyond Gujarat and in the context of another State industrial development corporation.

8. Supreme Court Development: Position Strengthened in 2026

The litigation concerning *Gujarat Chamber of Commerce and Industry* subsequently reached the Supreme Court.

On 21 July 2026, the Supreme Court considered the Revenue's batch of Special Leave Petitions arising from the Gujarat High Court's judgment dated 3 January 2025.

The Supreme Court recorded that a similar SLP, SLP (C) No. 18772/2026, had already been dismissed on 22 May 2026. In view of the earlier dismissal, the Court dismissed the connected SLPs as well.

The Supreme Court's dismissal is significant from the perspective of the continuing validity of the Gujarat High Court judgment. It also explains why subsequent Courts have treated the Gujarat Chamber decision as an important authority when considering similar disputes.

At the same time, the nature of an SLP dismissal must be appreciated carefully. The July 2026 order itself is brief and proceeds on the basis that a similar SLP had already been dismissed. Accordingly, the Supreme Court did not render a detailed independent exposition of the statutory provisions comparable to the Gujarat High Court's judgment.

Nevertheless, the dismissal has considerable practical significance because the Revenue's challenge to the Gujarat High Court ruling did not result in the judgment being set aside.

The current judicial landscape therefore includes:

1. the detailed reasoning of the Gujarat High Court in *Gujarat Chamber of Commerce and Industry*;

2. subsequent application of that reasoning in *Life Sciences Chemicals* and other Gujarat cases;

3. adoption of the same approach by the Bombay High Court in *Aerocom Cushions*; and

4. dismissal by the Supreme Court of the Revenue's challenge to the Gujarat Chamber decision in 2026.

9. The Importance of the Transfer of Property Act

One of the important features of the judicial analysis is that GST law cannot be interpreted without considering the legal character of the property right created or transferred.

Section 105 of the Transfer of Property Act, 1882 defines a lease as a transfer of a right to enjoy immovable property for a certain time in consideration of a price, rent, share of crops, service or other thing of value.

The legal character of a long-term lease is therefore materially different from a mere contractual permission to enter or use property.

Where the lease is for a substantial period and confers extensive rights upon the lessee, the leasehold interest itself constitutes an interest in immovable property.

The Gujarat High Court examined this broader legal framework while determining whether assignment of the leasehold rights amounted to transfer of an interest or benefit arising from immovable property.

This approach is significant because GST legislation does not exist in a vacuum. Terms relating to property rights must, where appropriate, be understood in their legal context.

The mere use of the word "lease" therefore cannot be decisive.

The relevant enquiry is the nature of the right that has been created and subsequently transferred.

10. "Assignment" Is Not Synonymous with "Lease"

A **major** practical difficulty encountered in GST disputes is the tendency to treat all property transactions involving the word "lease" as equivalent.

An assignment is conceptually different from the creation of a lease.

In an ordinary lease:

Lessor → grants right to enjoy property → Lessee

In an assignment:

Existing Lessee → transfers its leasehold interest → Assignee

The distinction becomes particularly important where the original lessee completely divests itself of its interest.

An assignee who acquires the entire remaining leasehold period is not merely receiving a temporary licence from the assignor. Subject to the terms of the lease and approval of the

lessor/development corporation, the assignee becomes the holder of the leasehold interest for the remaining term.

The Gujarat High Court's reasoning is therefore based substantially upon the legal consequences of the assignment.

11. Retention of Reversionary Rights: A Significant Test

The distinction between an outright assignment and a lease or sub-lease may also be understood through the concept of reversionary rights.

Where the owner grants a lease, the lessor retains the reversionary interest.

Similarly, where a lessee sub-leases property while retaining its own leasehold interest, the transaction may continue to bear the characteristics of a lease or sub-lease.

However, in an outright assignment, the assignor transfers its entire leasehold interest and does not retain the corresponding interest in the property.

This factor assumes importance in determining whether the transaction is properly viewed as:

- a continuing supply of the right to use property; or
- a transfer of the leasehold interest itself.

The Gujarat High Court specifically distinguished between the grant of leasehold rights and an outright assignment resulting in complete divestment of the original lessee's rights. The distinction has subsequently been reflected in cases following *Gujarat Chamber*.

12. Assignment of Leasehold Rights Along with Building

Another important factual feature in the reported cases is the presence of a building or factory constructed upon the leased plot.

The original lessee may have:

1. acquired leasehold rights over the land;

2. constructed a factory or other building;

3. operated its business from the premises; and

4. subsequently transferred the leasehold interest and building to another entity.

The GST authorities may view the transaction as a composite commercial transaction involving transfer of several rights.

The judicial approach, however, focuses upon the legal substance of the transaction.

Where the entire leasehold interest is assigned and the assignee becomes the lessee in place of the original lessee, the transfer is treated as transfer of benefits arising from immovable property.

The building standing upon the plot does not, by itself, convert the transaction into a service.

Nevertheless, this proposition should not be extended beyond its factual and legal basis. Every transaction involving a building and leasehold rights must be examined according to its documentation, property rights and the actual nature of the transfer.

13. Does Consideration Make the Transaction a Supply?

The mere receipt of consideration is not sufficient to establish GST liability.

Section 7 requires the transaction to satisfy the statutory requirements of supply.

This distinction is important because many assignment transactions involve substantial consideration, sometimes running into crores of rupees.

The fact that the assignor receives consideration does not answer the preliminary question of whether the activity constitutes a supply of goods or services.

In *Gujarat Chamber*, the consideration received for assignment of the leasehold rights did not transform the transfer of the immovable-property interest into a service.

This is a broader lesson in GST jurisprudence: **taxability follows the legal character of the taxable event, not merely the existence of consideration.**

14. Business Nexus and Section 7

Another issue considered in *Aerocom Cushions* was whether the assignment had a sufficient nexus with the business of the petitioner.

The Bombay High Court observed that the transaction concerned transfer of benefits arising from immovable property and, in the circumstances before it, had no nexus with the business of the petitioner. The Court therefore found the essential element of supply in the course or furtherance of business to be absent.

This aspect is particularly relevant in cases where a business entity disposes of an asset or property right.

However, the "business nexus" issue should not be considered independently of the more fundamental question concerning the nature of the transaction.

Where the transaction itself is outside the scope of supply because it is a transfer of immovable property, the question of business nexus may become secondary.

Conversely, where the transaction is in substance a service—such as leasing, renting or granting a right to use property—the business-nexus analysis may assume greater significance.

15. Classification under a Residual Service Entry

A recurring feature of the departmental approach in some cases has been the attempt to classify assignment of leasehold rights under a residual or miscellaneous service category.

The courts have been cautious about such classification.

Classification cannot be used to create a taxable supply where the transaction, by its legal nature, does not constitute a service.

The principle is particularly relevant because GST is a transaction-based tax. The first question must be whether the activity is a supply. Classification follows only after that threshold is crossed.

Thus:

Step 1: Identify the legal and commercial substance of the transaction.

Step 2: Determine whether it constitutes a supply under Section 7.

Step 3: Determine whether it is excluded by Section 7(2) or Schedule III.

Step 4: Only thereafter determine classification and rate.

This sequence is important in leasehold-right disputes.

16. What the Judgments Do Not Mean

The judicial developments should not be understood as establishing that **all transactions relating to leasehold property are outside GST**.

That would be an overstatement.

The following transactions may have different GST consequences:

a. Original grant of lease

The grant of lease by the owner or development corporation involves the creation of a right to enjoy immovable property and is specifically recognised under Schedule II as a supply of service, subject to applicable exemptions.

b. Periodic lease rent

Periodic rent payable under a lease is conceptually different from an outright assignment of leasehold rights.

c. Sub-lease

A sub-lease may involve retention of rights by the original lessee and creation of a subordinate right in favour of another person. Its GST treatment requires separate consideration.

d. Licence to occupy

A licence generally does not create the same proprietary interest as a lease. Its treatment

is therefore distinct.

e. Assignment of only a limited contractual right

Where only a particular contractual benefit or permission is transferred, it cannot automatically be equated with assignment of the entire leasehold interest.

f. Transfer of development rights

Development rights and leasehold rights are not necessarily identical. The GST treatment of a standalone development right may require independent examination based upon the relevant statutory provisions and factual arrangement.

Accordingly, the ratio emerging from *Gujarat Chamber*, *Life Sciences Chemicals* and *Aerocom Cushions* should be applied to transactions involving **substantive and complete assignment of leasehold rights**, particularly where the assignee steps into the shoes of the original lessee.

17. Practical Implications for Taxpayers

The judicial developments have significant implications for industrial units and other entities holding long-term leasehold properties.

17.1. Documentation becomes critical

Taxpayers should carefully examine:

- the original allotment letter;
- registered lease deed;
- duration of lease;
- assignment clause;
- restrictions on transfer;
- requirement of approval from the lessor;

- transfer premium;
- deed of assignment;
- treatment of the building;
- consideration payable; and
- whether the assignor completely divests its rights.

The legal conclusion will depend substantially upon these documents.

17.2. Difference between transfer premium and consideration

A transfer premium payable to the development corporation is not necessarily equivalent to consideration received by the assignor from the assignee.

The two transactions should be separately analysed.

17.3. GST collected under a mistaken understanding

Where GST has been charged or paid on a transaction subsequently found not to constitute a taxable supply, the taxpayer should examine the available statutory mechanisms for recovery or refund, keeping in mind limitation, unjust enrichment and documentary requirements.

The Gujarat High Court has already granted relief in subsequent matters concerning GST collected or demanded in connection with assignment of leasehold rights. For example, in Aquaeva Chemtech Private Limited, the Gujarat High Court dealt with refund consequences arising from GST paid on assignment of leasehold rights and followed the established line of authority.

17.4. Pending departmental proceedings

Where proceedings are pending, taxpayers should clearly distinguish between:

1. the original grant of lease;
2. payment of lease rent;

3. assignment of the existing leasehold interest; and

4. transfer of the building or other assets.

Combining all these transactions into a single "lease service" may obscure the actual taxable event.

18. Wider Significance for GST Jurisprudence

The leasehold-right controversy illustrates a fundamental principle of GST interpretation: **the statutory concept of supply is broad, but it is not unlimited**.

GST does not impose tax merely because a transaction has a commercial value or because consideration has been received.

The transaction must fall within the statutory concept of supply.

The case law also demonstrates the importance of harmoniously reading:

- Section 7;
- Section 9;
- Schedule II;
- Schedule III;
- the Transfer of Property Act, 1882; and
- other legislation governing the nature and transfer of immovable property.

The Gujarat High Court's approach effectively avoids treating Schedule II as an independent charging provision. Schedule II identifies activities that are to be treated as supplies of goods or services; it does not dispense with the threshold requirement of identifying the actual nature of the transaction.

This is an important interpretative safeguard against expanding the GST levy beyond the transaction contemplated by the charging framework.

19. Judicial Trend and the Present Position

The judicial trend can broadly be summarised as follows:

Gujarat Chamber of Commerce and Industry (Gujarat High Court, 2025): Outright assignment of long-term leasehold rights in GIDC industrial land, together with the building, was held to be transfer of benefits arising from immovable property and not liable to GST.

Life Sciences Chemicals (Gujarat High Court, 2025): The Gujarat High Court applied *Gujarat Chamber* and held that the assignment of leasehold rights in the facts of the case was not subject to GST.

Aerocom Cushions (Bombay High Court, 2026): The Bombay High Court followed the Gujarat view in the context of MIDC leasehold rights and held that the assignment did not constitute a taxable supply of service.

Supreme Court – May and July 2026: The Supreme Court dismissed the Revenue's SLP in a similar matter in May 2026 and subsequently dismissed the connected SLPs arising from the Gujarat Chamber decision on 21 July 2026.

The cumulative effect is that the judicial position concerning **outright assignment of long-term leasehold rights in the circumstances considered by these Courts** is considerably stronger than it was when the litigation commenced.

20. Need for Legislative and Administrative Clarity

Despite the developing jurisprudence, some uncertainty remains.

The principal difficulty is that the GST statute uses broad expressions such as "lease", "licence", "rental", "transfer" and "disposal", while the law of property recognises several distinct interests in immovable property.

A clear administrative clarification could therefore distinguish between:

1. **creation/grant of leasehold rights**;
2. **continuing enjoyment under a lease**;

3. **sub-lease**;
4. **assignment of the entire leasehold interest**;
5. **transfer of development rights**;
6. **licence to occupy**; and
7. **transfer of constructed property standing on leasehold land**.

Such clarification would substantially reduce litigation.

The clarification should also address the consequences of GST already collected in transactions that are subsequently held to be outside the scope of supply.

21. Findings and Suggestions

21.1. Findings

The principal finding emerging from the judicial developments is that **leasehold rights cannot be treated as a homogeneous category for GST purposes**.

The GST treatment depends upon the nature of the right created or transferred.

A transaction involving the **grant of a lease** is fundamentally different from a transaction involving the **outright assignment of an existing leasehold interest**.

The former creates a right to enjoy immovable property and is expressly recognised within the framework of Schedule II. The latter, where the entire leasehold interest is transferred and the assignee steps into the shoes of the original lessee, has been judicially characterised as a transfer of benefits arising from immovable property rather than a supply of service.

The Gujarat High Court's decision in *Gujarat Chamber of Commerce and Industry* provided the detailed foundation for this distinction. The subsequent decision in *Life Sciences Chemicals* and the Bombay High Court's judgment in *Aerocom Cushions* demonstrate its application in subsequent disputes. The dismissal of the Revenue's SLPs by the Supreme Court in 2026 has further strengthened the practical authority of the

Gujarat High Court's decision.

At the same time, the principle should be applied carefully. The decisions do not establish a universal exemption for every transaction described as an assignment or involving leasehold property. The precise legal rights transferred, the duration of the lease, the terms of the assignment, the existence of reversionary rights and the treatment of the building must all be considered.

21.2. Suggestions

First, the GST authorities should issue a comprehensive circular distinguishing an original lease from an outright assignment of leasehold rights.

Second, taxpayers should ensure that deeds of assignment clearly record the extent of rights being transferred and whether the assignor completely divests itself of the leasehold interest.

Third, departmental officers should examine the legal substance of the transaction before invoking residual service classifications.

Fourth, where the transaction falls outside the scope of supply because it constitutes transfer of an interest in immovable property, the demand should not be sustained merely because consideration has been received.

Fifth, the Government may consider providing a clear mechanism for taxpayers who have paid GST under a bona fide but subsequently rejected interpretation of the law, particularly in cases where the tax burden has not been passed on to another person.

Sixth, future litigation should distinguish between outright assignments of leasehold interests and transactions involving development rights, licences, sub-leases or limited contractual rights. The legal treatment of these transactions should not be conflated.

22. Conclusion

The controversy surrounding GST on leasehold rights reflects the difficulty of applying a comprehensive indirect tax to transactions that straddle the boundary between property law and service taxation.

The central lesson from *Gujarat Chamber of Commerce and Industry*, *Life Sciences Chemicals* and *Aerocom Cushions* is that the mere fact that a transaction originates from a lease does not determine its GST treatment. The substance of the transaction and the nature of the rights transferred remain decisive.

Where a State Industrial Development Corporation grants a long-term lease, the grant of the right to enjoy the land may constitute a supply of service within the GST framework. However, where the original lessee subsequently assigns its entire leasehold interest to a third party, **completely** divests itself of its rights and the assignee steps into its position, the transaction has been judicially regarded as a transfer of benefits arising from immovable property rather than a taxable supply of service.

The Gujarat High Court's judgment of 3 January 2025 established this distinction in the context of GIDC industrial plots. The principle was subsequently followed in *Life Sciences Chemicals* and by the Bombay High Court in *Aerocom Cushions*. The Supreme Court's dismissal of the Revenue's challenge in 2026 has given the position substantial judicial finality, at least in relation to the factual and legal framework considered in those proceedings.

The more enduring significance of these decisions, however, lies beyond the immediate taxability of industrial leasehold assignments. They reaffirm that GST liability must arise from the statutory character of the transaction. Classification cannot precede the identification of a taxable supply, and the broad scope of Section 7 cannot be employed to disregard the legal nature of property rights.

Accordingly, the correct approach to leasehold transactions under GST should be one of **careful characterisation rather than automatic classification**. A transaction should first be examined to determine whether it represents the creation or continued enjoyment of a right to use immovable property or whether it represents the complete transfer of an existing proprietary or quasi-proprietary interest in such property.

This distinction, if consistently applied by taxpayers, advisors and tax authorities, can substantially reduce unnecessary litigation and provide greater certainty to businesses dealing with long-term industrial properties.