

## TAXABILITY OF ASSIGNMENT OF LEASEHOLD RIGHTS: CASE SUMMARY AND KEY POINTS

### Summary of the Case

**Case Name:** Gujarat Chamber of Commerce and Industry & Ors. vs Union of India & Ors. (Clubbed with over 50 other matters)

**Court:** Gujarat High Court

**Case Number:** Special Civil Application No. 11345 of 2023 (Lead matter)

**Judgment Date:** January 3, 2025

This case addresses whether the assignment of leasehold rights over land constitutes a taxable supply of service under the Goods and Services Tax (GST) Act, 2017. Petitioners, including the Gujarat Chamber of Commerce, challenged GST levied on transactions where industrial plots leased by Gujarat Industrial Development Corporation (GIDC) were assigned to third parties.

The Court clubbed over 50 Special Civil Applications, as they involved similar issues, to deliver a consolidated judgment. Notably, *Ashva Legal*, through Senior Counsel Avinash Ji Poddar, was one of the representatives, adding to the sense of pride in contributing to this pivotal legal development.

The High Court ruled in favor of the petitioners, holding that the assignment of leasehold rights is not a taxable service under GST. The judgment emphasized the principles distinguishing sale, lease, and service and

concluded that assignment of leasehold rights pertains to immovable property, excluded from GST.

### Key Points for the Decision

#### **1. Definition of Immovable Property:**

- Leasehold rights in land are considered immovable property under the Transfer of Property Act and relevant precedents. Assignments involve the transfer of such rights, rendering them transactions in immovable property.

#### **2. Scope of "Services" Under GST:**

- Section 2(102) of the GST Act defines services as anything other than goods, money, and securities. Absolute transfer of immovable property does not qualify as a service.

#### **3. Schedule III Exclusion:**

- Schedule III of the GST Act excludes the sale of land and buildings from GST. Assignments of leasehold rights, being closely related to land, also fall within this exclusion.

#### **4. Legal Precedents:**

- The Court relied on several judgments to conclude that lease assignments do not involve the provision of services but rather constitute transfers of property rights:

- *Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co. (1979) 3 SCC 106*: Held that every interest in immovable property or a benefit arising out

of land is classified as immovable property.

- ***Gopal Saran v. Satyanarayana (1989) 3 SCC 56***: Defined "assignment" as the transfer of all rights in property, severing the assignor's relationship with the lessee.

- ***State of West Bengal v. Gautam Sur AIR 2008 Cal 1***: Differentiated between assignments and underleases, categorizing the former as transfers of immovable property rights.

- ***Narinder S. Chadha v. Municipal Corporation of Greater Mumbai (2014) 15 SCC 689***: Emphasized that sale and service are distinct concepts; sale involves a transfer of ownership, while service pertains to activities rendered.

- These rulings collectively established the jurisprudence that lease assignments constitute transactions in immovable property, falling outside the ambit of "services" under the GST Act.

## **5. Intent of GST Legislation:**

- The Court recognized that GST aims to tax supply of goods and services, not immovable property transactions.

## **6. Input Tax Credit Irrelevance:**

- Petitioners argued that GST levied on such assignments cannot be offset through input tax credit, further affirming that such transactions were not intended to be taxed.

## Conclusion

This judgment holds significant persuasive value and provides a robust legal precedent for taxpayers to defend similar cases involving the assignment of leasehold rights. By clarifying the scope of GST concerning immovable property, it strengthens the position of taxpayers facing analogous disputes, contributing to fair tax administration.

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