



Karneeti Part 578

"Judgment on assignment of Leasehold Rights under GST – Big Relief to Taxpayers"

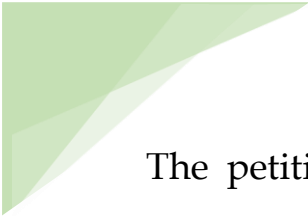
CA Umesh Sharma

Arjuna (Fictional Character): Krishna, recently, I came across news about a Gujarat High Court judgment involving leasehold rights and GST. Could you help me to understand its crux and implications?

Krishna (Fictional Character): Arjuna, this judgment is a landmark one. It clarifies whether the assignment of leasehold rights is subject to GST or not? The Gujarat High Court addressed critical questions about its classification and whether it qualifies as a supply under GST.

Arjuna (Fictional Character): Krishna! could you explain the background of this case?

Krishna (Fictional Character): Arjuna. The matter involved the Gujarat Industrial Development Corporation (GIDC), which allots industrial plots on a 99-year lease. Many leaseholders transfer their leasehold rights in land along with building to third parties for consideration. The tax authorities issued notices, claiming these transactions attracted GST at 18%, treating them as "supply of service" under the GST Act.




The petitioners Gujarat Chamber of Commerce and Industry (GCCI), argued that such transactions are absolute transfers of immovable property in land and Building and are not services, and hence not liable to GST.

Arjuna (Fictional Character): Krishna, what were the key arguments made by petitioners?

Krishna (Fictional Character): Arjuna, here are some major arguments of the petitioner (GCCI):

1. The petitioners (GCCI) argued that leasehold rights are part of immovable property, and assignment of these rights is a complete handover of ownership-like rights and it is not a service. They contended that such transfers should not be taxed under GST.
2. They further submitted that renting property involves providing a service, whereas assigning leasehold rights permanently is more like selling property, which falls outside the scope of GST.
3. They emphasized that stamp duty already applies to such transactions, and imposing GST would result in double taxation.
4. They further argued that GST classifications for services are not suitable for Immovable property transactions and highlighted that the legislative intent is to exclude immovable property transactions from GST.
5. They further submitted that assigning leasehold rights permanently is essentially a sale of property rights, where the payment received is for transferring absolute rights in immovable property, not a




"premium" or "compensation" for any service. They clarified that this transaction is not the same as sub-leasing and should not be classified as a service.

Arjuna (Fictional Character): What were the key contentions of the respondents?

Krishna (Fictional Character): The respondents contended that assigning leasehold rights involves transferring a benefit in form of intangible asset, qualifying it as a taxable service under Section 7(1)(a) of the GST Act, and attracting 18% GST. They equated it to sub-leasing or renting categorizing the same as taxable services. Also, they stated that the payments received for such assignments should be classified as "compensation" or "premium" and the same shall be taxable under GST.

Arjuna (Fictional Character): What is the Final Decision of the court?

Krishna (Fictional Character): The Gujarat High Court in their final verdict agreed with the petitioners arguments and clarified that such permanent assignments of leasehold rights are transfers of immovable property and are not a taxable service and excluded from GST under Schedule III. The Court further clarified that these transactions differ from renting or sub-leasing and are already subject to stamp duty, making GST imposition of unfair double taxati-on. Additionally, the court rejected attempts to classify these transfers under GST service categories, emphasizing that the legislative intent excludes immovable property dealings from GST. Hence, The Court invalidated the notices issued by tax authorities demanding GST on these transactions, providing relief to taxpayers.



Arjuna (Fictional Character): Krishna, what should taxpayers learn from this?

Krishna (Fictional Character): Taxpayers should note that it's a litigative matter. GST Department may prefer appeal in Supreme Court. Further keep watch in forthcoming Union Budget or GST Council meeting on above matter. Taxpayers should remain proactive in understanding the scope of GST and ensure that they comply with applicable laws while challenging unjust tax demands.

