

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 1

Service Tax Appeal No. 13008 of 2019- DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-361-2019-20 dated 30/08/2019 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax-Surat-I)

SUPERTEX WOVEN INDUSTRIES

.....Appellant

PLOT NO. 168/179/180,
DABHEL INDUSTRIAL CO-OPERATIVE SOCIETY LTD,
DABHEL, DAMAN, GUJARAT

VERSUS

COMMISSIONER OF C.E. & S.T.-DAMAN

.....Respondent

3RD FLOOR...ADARSH DHAM BUILDING,
VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
DAMAN, GUJARAT- 396191

APPEARANCE:

Shri Vinod Awtani, Chartered Accountant for the Appellant

Shri Neilprakash G Makwana, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10828/2025

DATE OF HEARING: 03.06.2025

DATE OF DECISION: 30.09.2025

SATENDRA VIKRAM SINGH

M/s Supertex Woven Industries, Daman (Appellant) are engaged in the manufacture of excisable goods falling under Chapter 39 of the Central Excise Tariff Act, 1985. During audit of their records for the period 2015-16 & 2016-17, the audit officers found that the appellant had transferred "tenancy and occupancy right" of building located at 220F, Reay Road, Old Atlas Mill Compound, Mumbai which was being used by them for their registered office, for consideration of Rs. 6,29,44,000/- to M/s Sumer Buildcorp Pvt Ltd. They entered into an agreement with the builder, vacated the said premises but did not pay the service tax of Rs. 94,41,600/- on the above consideration amount. The department therefore, issued a show cause notice dated 26.03.2019 to the appellant proposing recovery of service tax of Rs. 94,41,600/- under Section 73(1) along with interest under Section 75 and penalty under Section 77 and 78 of the Finance Act, 1994.

1.1 The show cause notice was decided vide order dated 25.05.2019 wherein the adjudicating authority confirmed above service amount upon the appellant under proviso to Section 73 along with interest and imposed a penalty of Rs. 10,000/- under Section 77 and penalty equal to service tax amount under Section 78 of the Finance Act, 1994. Aggrieved with the above order, the appellant filed appeal before the learned Commissioner (Appeals) who vide impugned order dated 30th August, 2019 upheld the order of the lower authority and rejected their appeal. Hence, this appeal.

2. In appeal, the appellant took the following grounds:-

a) W.e.f. 01.07.2012, the term 'service' is defined under Section 65 B(44) of the Finance Act, 1994 as under: -

*"service" means any activity carried out by a person for another for consideration, and y1 includes a declared service, **but shall not include-***

(a) an activity which constitutes merely, -

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ia)

(ii)

Transfer of Tenancy right by the appellant is a transaction in immovable property and hence, excluded from levy of service tax.

b) The term 'immovable property' has been defined under Section 2(26) of the General Clauses Act, 1987 as follows:-

(26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

The definition of 'immovable property' not only includes land but also the benefits arising out of land. The tenancy rights are in the nature of a right to occupy an immovable property, hence, this is also the benefits arising out of land and thus, such rights are immovable property.

c) In the case of M/s Jagannath Govind Shetty Vs. Javantilal Purshottamdas Patel- AIR 1980 Guj. 41, Hon'ble Gujarat High Court has held that *"Even the tenancy rights are immovable property of the tenant. In order to grant license, a man need not be its owner. The tenancy rights of an immovable property are also the immovable property of the tenant and, therefore, he can well grant the license."*

d) Similarly, Hon. Delhi High Court in the case of Kenneth Solomon Vs Dan Singh Bawa, AIR 1986 DEL 1 has observed that right of enjoyment contemplated under Section 105 of the Transfer of Property Act, is an interest in the immovable property since such agreement of lease confers on the lessee the right to possess the immovable property which is subject matter of the Lease.

e) Transaction entered into by the Appellant is in the nature of transfer of title in immovable property and therefore, the said transaction is excluded from the definition of "service". In view of the above, they are not liable to any service tax on the amount received towards surrender and relinquishment of their tenancy and occupancy rights.

f) The Appellate authority confirmed the demand on the ground that agreement entered into by the appellant is not in the nature of sale of immovable property or transfer of title in immovable property. The said transaction is not equivalent to transfer of title of the property as they are not the owner of the property.

g) Demand cannot be confirmed on the basis of non-submission of documentary evidence to prove transfer of property. Payment of stamp duty cannot be treated as the sole criteria for determining the nature of transaction as transfer of title in immovable property.

h) Learned Appellate authority relied on the Advance Ruling in the case of Zaver Shankarlal Bhanushali- 2018 (14) GSTL 429 (A.A.R.-GST) to hold that

the amount is taxable. This ratio cannot be applied in their case as judgment rendered by Advance Ruling Authority cannot be treated as binding precedent.

They rely on the following cases:-

- Lloyd Electric & Engineering Ltd. 2018 (361) E.L.T 1043 (Tri - All.)
- Laxmi Electricals & Decorators. 2016 (41) S.T.R. 132 (Tri. - Del.)

i) The SCN is not maintainable as demand is without jurisdiction. The CERA has conducted audit of their factory in Daman whereas the concerned building in which their registered office is located, is in Mumbai. The Service Tax has been demanded by Daman Commissionerate without having it's jurisdiction. They rely on the decision of this Tribunal in the case of M/s Vihar Aahar Pvt Ltd. 2013 (32) STR 563 (Tri.-Ahmd.). Para 6 of the said judgment is as follows:-

"6. On perusal of the records, we find that the adjudicating authority has confirmed the demands which are beyond his jurisdiction and falls within the jurisdiction of various other Commissionerates. We are not shown any notification or circular issued by Board authorizing or directing the Ahmedabad -I Commissioner to issue Show Cause Notice and adjudicate the same. In the absence of any such notification, in our view, the jurisdiction exercised by Commissioner of Service Tax, Ahmedabad I for confirming demands of other commissionerates seems to be beyond his jurisdiction."

They also rely on the decision in the case of M/s Ores India Pvt. Ltd. 2008(9) STR 157.

j) Hon'ble CESTAT in the case of Helios Food Additives Pvt Ltd.- 2012 (25) STR 107 (Tri.-Mumbai) has held as follows:-

"6. It is not in dispute that the services were rendered at Mumbai and the registered office of the Appellant is also in Mumbai. It is further on record that the respondent/Appellant had obtained service tax registration in Mumbai even though for a different taxable service, namely, renting of immovable property. This Tribunal in the Ores India (P) Ltd., case has clearly held that as per Rule 3 of Service Tax Rules, 1994 read with Board's order

No. 1/94, dated 29-6-1994, it is the Commissioner in whose territorial jurisdiction, the registered office of the service provider is located, has the jurisdiction over him irrespective of the place where service is provided. In the instant case, service has been provided at Mumbai and the registered office is also situated in Mumbai, hence, the Assistant Commissioner at Ratnagiri has no jurisdiction over the activities undertaken by the respondent in Mumbai. Therefore, the proceedings initiated by the Assistant Commissioner, Ratnagiri are unsustainable in law, as rightly held by the lower appellate authority. The Department's appeal is devoid of merits and, accordingly, the same is dismissed."

k) The reliance of the Appellate authority on the judgment of Chitra Construction Co.- 2013 (31) STR 385 (Mad.) is misplaced as the said judgments was in relation to jurisdiction of search/ arrest warrants by the authorities.

l) No mala fide intent is there and therefore, penalty under Section 78 is not leviable. They rely on the following cases:-

- Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay 1995 (75) ELT 721 (SC).
- CCE Vs. Chemphar Drug and Liniments 1989(40) ELT 276 (SC),
- Pushpam Pharmaceuticals company VS. CCE, Bombay 1995 (78) ELT 401 (SC)

m) No mala fide intent in non-payment of service tax as they were under a bona fide belief. They rely on the following cases:-

- Stone & Webster International Inc. V/s CCEx., Vadodara. 2011 (22) S.T.R. 467 (Tri. Ahmd.)
- Aditya Birla Nuvo Ltd. V/s CCEx., Vadodara. 2011 (22) S.T.R. 41 (Tri. Ahmd.)
- CCEX V/s Steel Cast Ltd. 2011 (21) S.T.R. 500 (Guj.)

- Khurana Engineering Ltd. V/s CCEx. Ahd 2011 (21) S.T.R. 115 (Tri.-Ahmd)

n) SCN does not point out any mala fide conduct of the appellant and therefore, impugned order has gone beyond the scope of SCN in imposing the penalty. As the transactions have been disclosed in the appellant's books of accounts, no malafide conduct can be alleged for non-payment of service tax. They rely on the decision in the case of Kirloskar Oil Engines Ltd. 2004 (178) ELT 998 (Tri.-Mumbai) and Steelcast Ltd. – 2009 (14) STR 129 (Tri.-Ahmd.) and further upheld by Hon'ble Gujarat High Court vide 2011 (21) STR 500(Guj.)

o) As service tax itself is not payable, no interest is payable by them under Section 75 of the Finance Act, 1994.

p) Penalty under Section 77 is not leviable as they have not violated any of the provisions and were not liable to make any payment or file returns for such transactions.

3. During arguments, learned Counsel highlighted the case laws already quoted by them in their appeal. To challenge jurisdiction, learned counsel cited the decision of Allahabad Tribunal in the case of Unitech Machines Ltd. Vs. Commissioner of Central Excise, Meerut-I- 2018 (9) GSTL 401 (Tri.-All.) wherein it was held that registered office of the company located in New Delhi and assessee factory at Saharanpur are separately registered with the department. Registered office independently engaged in other businesses of contract nature. The Consultancy Engineering Services received from Japanese company by the registered office are not in relation with affairs of the factory at Saharanpur nor any Cenvat credit is transferred by registered office to the factory at Saharanpur. Service Tax division at Saharanpur under Commissioner of Central Excise & Service Tax, Meerut-I did not have jurisdiction to issue notice for their registered office.

3.1 On merits, Learned Advocate relied on the decision of Hon'ble Gujarat High Court in the case of Gujarat Chamber of Commerce and Industry & Ors., M/S. Multi Thread Fast Imperial Engineers, Lucid Colloids Ltd., M/S. Metal Plast Engineers Versus Union of India & Ors., reported at 2025 (1) TMI 516- Gujarat High Court. Hon'ble Gujarat High Court in this case held that *"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."* He argued that ratio of this decision is equally applicable in this case as definition of "Service" in both Pre GST as well as post GST period are similarly worded.

3.2 Learned Counsel also highlighted the decision of Cestat Kolkata in the case of M/s Bhakar Steel and Ferro Alloys Pvt Ltd, Shri Nikunj Beriwal, Director reported at 2022(8) TMI 989-Cestat Kolkata which is squarely applicable in their case wherein issue was demand of service tax on compensation amount received for transferring tenancy rights in favour of another person. The Tribunal held that the appellants were not required to pay service tax on the amounts received by them in the above enumerated cases. It also found that the whole case is based on the balance sheet of the appellant and therefore, extended period is not invokable. Various Courts have consistently held that the extended time limit can be invoked only if there is a positive act on the part of an assessee to conceal anything from the department. He therefore argued that the demand of service tax is neither sustainable on merits nor on

jurisdiction. Extended period is also not invokable in this case. Hence, the impugned order be set aside and their appeal be allowed.

4. Countering the arguments, Learned AR reiterated the findings of the lower authorities. He mentioned that the appellant being tenant of M/s. Anwar Textile Mills Pvt. Ltd, used to pay them rent for using the premises located at 220F, Reay Road, Old Atlas Mill Compound, Mumbai for their registered office. As registered office has no separate business nor are they registered separately under the service tax, the show cause notice issued by Daman Commissionerate is within its jurisdiction. They transferred Tenancy and Occupancy Rights to M/s. Sumer Buildcorp Pvt. Ltd. for a consideration which did not involve any sale of the said property. Hence, the above activity attracts service tax being not exempt under any notification. What is exempt under service tax is an activity involving "a transfer of title in goods or immovable property, by way of sale, gift or in any other manner." The appellant in this case neither submitted any evidence in the form of payment of stamp duty nor sale transaction is duly recorded in the land revenue records. Hence, the activity is a service under Section 65B(44) and is liable to service tax. He also defended invocation of extended period on the ground that the appellant neither took registration under service tax nor filed the ST-3 showing above transactions. Such transactions would not have come to notice but for Audit of their records by CERA. Hence, extended period has rightly been invoked in this case.

5. We have heard the rival submission. We find that following issues need decision: -

- a) Whether impugned show cause notice dated 26.03.2019 issued by the 'Joint Commissioner, Central GST Commissionerate Daman in respect of immovable property located at Mumbai is beyond jurisdiction?

- b) Whether Transfer of occupancy and Tenancy rights in respect of immovable property are covered within the definition of service as defined under Section 65B(44) of the Finance Act, 1994?
- c) Whether extended period is invocable in this case as the entire matter was recorded in their books of accounts and there was no cause of any suppression, mis-statement or fraudulent attempt on their part to evade payment of service tax?

5.1 Challenging the jurisdiction, learned Counsel mentioned that the property for which "Tenancy and occupation" rights were assigned by them in favour of Sumer Buildcorp Pvt Ltd. in lieu of consideration of Rs. 6,29,44,000/- is located at Mumbai. Their registered office is located in that building on rental basis whereas factory is located at Daman. If at all, any service tax arises on such assignment of tenancy right, the show cause notice should have been issued by the jurisdiction Commissionerate in Mumbai and not by Daman Commissionerate. Relying on the decision in the case of M/s Vihar Aahar Pvt. Ltd- 2013 (32) STR 563 (Tri.-Ahmd.), Unitech Machines Ltd.- 2018(9) GSTL 401 (Tri.-All.), Helios Food Additives Pvt. Ltd. 2011(24) STR 721(Tri.-Mumbai), Ores India Pvt Ltd.-2008 (9) STR 157 (Tri.-Kolkata), he pleaded to set aside the show cause notice itself which is issued without jurisdiction. We find that this aspect has been discussed by the Appellate authority, wherein he has justified issuance of show cause notice by Daman Commissionerate. Learned Counsel was asked to submit whether their registered office was involved in any separate business activity other than the manufacturing in their factory and whether their factory was availing input service credit of service tax paid on rented premises or any other input services like telephone, internet, man power supply service, security service, etc. Also, if they could provide a copy of the agreement with the builder for surrender of Tenancy right in lieu of consideration. Learned Counsel submitted the said information on 26.09.2025 which reveals that the registered office of the appellant located at Mumbai is

not engaged in any separate business activity. All the expenses of the Registered office including rent of the hired premises, telephone, internet, etc. are booked in common expenditure ledger of the appellant factory as no separate expenditure head is being maintained. The rent of the premises housing their registered office is quite less on which the building owner was not paying any service tax and no Cenvat credit was availed. As a proof, he submitted sample copy of the rent receipt. As such, they are not transferring any Cenvat credit to their factory. The above details establish that the registered office of the appellant was neither engaged in any independent business activity nor were they availing any separate input services. All the expenditure on account of registered office were booked in Common expenditure Ledger of the factory and no separate expenditure head was being maintained. The appellant factory was having both Central Excise registration as well as Service Tax registration. In absence of any separate business activity by the registered office, we are of the view that the plea raised by the appellant on jurisdiction to issue show cause notice is ill founded and hence, we reject the same holding that the show cause notice has been rightly issued by CGST Commissionerate, Daman and the service tax liability if any to be paid in respect of their registered office, was to be discharged by the appellant factory. The facts in the relied upon cases are entirely different than the issue in hand hence, these cases are not applicable in the present matter.

5.2 The Revenue in this case has demanded service tax of Rs. 94,41,600/- from the appellant along with interest and penalties under Section 77 and 78 of the Finance Act, 1994 on receipt of a consideration of Rs. 6,29,44,000/- for relinquishing the tenancy and occupancy rights in building located at 220F, Reay Road, Old Atlas Mill Compound, Mumbai which was used by the appellant for their registered office. It is the argument of the appellant that relinquishment of tenancy right is in relation to immovable property and therefore, by virtue of exclusion clause in the definition of service as provided

under Section 65B(44) of the Finance Act, 1994, such an amount is not liable to any service tax. As per Section 65B(44) of the Finance Act, 1994:

"(44) "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) An activity which constitutes merely, –

(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii)

(iii)"

The learned Counsel also relied on various case laws as cited supra in support of their case.

5.3 We find that Hon'ble Allahabad High Court in the case of Kanhiya Lal and Ors. 1964 (8) TMI 96 has delved into the concept of Tenancy rights in immovable property, emphasising that the right of enjoyment derived from a building, such as tenancy right, constitutes immovable property. This judgment though is in relation to valuation of tenancy rights but it does hold that tenancy right is also one of the rights under immovable property. Para 5,6 and 7 of the said decision are reproduced below: -

"5. *The term "immovable property" has not been defined in the Act, and unless there is anything in the subject or the context to suggest to the contrary, it can be given the same meaning as contained in the definition clause of the General Clauses Act. In Section 3(26) of the Central General Clauses Act, "Immovable property" is defined to include "land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth." A similar definition is contained in Section 4 (23) of the U. P. General Clauses Act with the modification that 'immovable property shall not include standing timber, growing crops or grass. The definition is clearly illustrative and not exhaustive, and can cover buildings and benefits to arise out of buildings. Building is a thing attached to the earth and is by itself an immovable property. In the case of land, benefits to arise out of land are also "immovable property", and consequently, in the case of buildings, benefits to arise out of buildings can be deemed to be "immovable property."*

6. *Benefits to arise out of building can be of various kinds depending upon the rights which can be enjoyed by the person. Owner of a building not in*

occupation thereof can exercise his proprietary rights by letting the accommodation to tenants and collecting rent from them. An owner in occupation of the building enjoys not only the proprietary rights but also the right of occupation. A lessee including tenant also enjoys benefits arising out of the building. He has the right to occupy the building on payment of the lease money till the tenancy is determined by the lessor or lessee. When the lessee (tenant) enjoys certain rights in the building, he is a person who is in enjoyment of benefits arising out of the building and the tenancy right shall by itself be an "immovable property".

7. This shall be apparent from the definition of 'lease of immovable property' as contained in Section 105 of the Transfer of Property Act. Lease of immovable property is so defined to mean

"a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

Lease is the transfer of a right to enjoy the immovable property and what has been transferred is the right of enjoyment.

Consequently, in cases of lease or tenancy, immovable property in dispute is the right of enjoyment of the property. As this is a benefit arising out of the building, the tenancy right is (in ?) an immovable property shall also be in (an?) immovable property."

5.4 We also find that Hon'ble Gujarat High Court in the case of Gujarat Chamber of Commerce and Industry & Ors., M/s. Multi Thread Fasteners, M/s. Imperial Engineers, Lucid Colloids Ltd., M/s. Metal Plat Engineers- 2025(1) TMI 516, discussed levability of GST on transfer of lease rights. The provision of Section 65B(44) of Finance Act, 1994 defining "Service" have also been discussed in detail. After, considering several other decisions, Hon'ble High Court concluded that 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-assigner in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, such transaction of assignment of lease hold right of

land and building would not be subject to levy of GST. Hon'ble Court considered Section 54 of the Transfer of Property Act, 1882 which defines "sale" read with Section 105 and 108 of Transfer of Property Act. Section 108(j) relating to Lease as part of rights and liabilities of lessee reads as under: -

*"**108 (j)** the lessee may transfer absolute or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease"*

At para 24, Hon'ble Court observed that it is necessary to determine as to whether the assignment of lease hold rights of the land along with building thereon would be covered by the supply of goods or supply of services because as per the provisions of Section 7(1)(a), supply of goods or services or both covers i.e. (i) sale, (ii) Transfer, (iii) barter, (iv) exchange, (v) license, (vi) rental, (vii) lease (viii) disposal made or agreed to be made for a consideration by a person in course of furtherance of business. In para 25, it observed that assignment of lease hold rights would be covered by sale, transfer, exchange for a consideration by a person. Such sale, transfer, exchange for a consideration by a person is in the course of furtherance of business or not has to be determined. Once the transaction of assignment of lease hold rights takes place, business would be transferred by assigner in favour of the assignee. The relevant paras of the said judgment are reproduced below:-

*"**36.** Therefore, even if the assignment of leasehold rights on the land on charge of one time upfront amount by the GIDC for allotment of plot of land to the industrial unit is covered within the scope of "supply of services" as per clause 5(a) of the Schedule II read with section 7(1) of the GST Act, charging of one time upfront amount as premium by the GIDC would attract Nil rate of tax as per the aforesaid notification. Therefore, when the industrial unit is allotted land by the GIDC, no GST is required to be paid under the provisions of GST Act as per entry no. 41 of Notification No. 12/2017.*

***37.** As per the lease deed executed by GIDC in favour of industrial unit for allotment of plot of land, the industrial unit is entitled to transfer such leasehold*

land in favour of any third party with the prior permission of the GIDC on payment of transfer charges as prescribed by GIDC. However, such transfer fee would be subject to levy of GST at the rate of 18% under the GST Act as it would amount to supply of services by GIDC giving permission to transfer the leasehold rights by the industrial unit in favour of a third party who will become the lessee-assignee in place of the original allottee-assignor of the plot by the GIDC. Deed of assignment of leasehold rights which is executed by the lessee-assignor in favour of the third party is also subjected to levy of stamp duty under the provisions Gujarat Stamp Act, 1958 as well as it is compulsorily required to be registered under the provisions of the Registration Act, 1908.

39. Immovable property is not defined under the provisions of the GST Act, however, same is defined in the following enactments:

i) Section 3(26) of the General Clauses Act 1897 defines "immovable property" as under:

"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

ii) Section 3 of the Transfer of Property Act, 1882 pertains to interpretation clause. In this Act, unless there is something repugnant in the subject or context- "immovable property" does not include standing timber, growing crops or grass.

iii) Section 2(6) of the Registration Act, 1908 defines "immovable property" as under:

(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass."

40. The definition of immovable property as per the Registration Act, 1908 is an exhaustive definition. Section 17 of the Registration Act provides for documents of which registration is compulsory. Clause (d) of section 17 provides for compulsory registration of the leases of immovable property from year to year or for any term exceeding one year or reserving a yearly rent. Therefore, the lease deed executed by the GIDC is required to be compulsorily registered under section 17 of the Registration Act, 1908.

41. It is pertinent to note that what the petitioner has transferred by way of assignment/sale is 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. Therefore, immovable property includes in addition to right of ownership, aggregate of rights that are guaranteed and protected by the further agreement or contract between the owner and the lessee. Therefore, as held in case of *Schweihs v. Chase Home Finance, LLC* reported in 2015 IL App(1st) 140683, property is nothing but a "bundle of sticks", i.e. collection of individual rights which, in certain combinations, constitute property and law determines only which sticks are in bundle of a person.

42. In the above context, it would be germane to refer to section 54 of the Transfer of Property Act, 1882 which defines "sale" as transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. It further defines "sale how made" as transfer in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

43. Sections 105 and section 108 of the Transfer of Property Act, 1882 pertains to leases of immovable property. Section 105 of the said Act defines "lease" to mean a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent is further defined as the transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

44. Section 108 prescribes the rights and liabilities of lessor and lessee. Clause (j) of section 108 pertains to rights and liabilities of lessee and stipulates that a lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. It further provides that the lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

46. The Indian Stamp Act, 1899 also defines lease under section 2(16) as under:

2(16). "Lease" means a lease of immovable property and includes also

(a) a patta;

(b) a Kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted."

48. *The instrument of lease is liable to levy of stamp duty as per Article 30 of the Schedule-I of the Gujarat Stamp Act, 1958, where lease is more than ninety eight years, same duty is prescribed as is leviable for conveyance under Article 20. Therefore, as per the provisions of the Gujarat Stamp Act, instrument of lease is considered at par with the conveyance for the sale of immovable property.*

49. *Learned Advocate General Mr. Kamal Trivedi has drawn distinction between "immovable property" and "interest in immovable property" i.e. difference between tangible rights and intangible rights in the immovable property so as to submit that immovable property as such is not liable to levy of GST whereas interest in immovable property like leasehold rights which is transferred by way of sale is liable to levy of GST falling within the scope of "supply of services".*

50. *Therefore, the submission was made to the effect that right to occupy the land which is one of the bundle of rights falling within the interest of immovable property when transferred by GIDC in favour of lessee is to be treated as supply of service under the GST Act and any further transfer which is the same right to occupy/possess will continue to remain as supply of service. It was submitted that characteristics of interest in immovable property on further transfer would not change only because the lessee-assignor effects absolute transfer in favour of assignee with respect to leasehold rights.*

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.

52. *Therefore, the place of supply of service may be at the location of the immovable property, however 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". Therefore, the question of supply of services or place of supply of services does not arise in view of the above analysis of the provisions of the GST Act as the term "immovable property" is not defined under the GST Act.*

53. *Lord Wensleydale reaffirmed by Lord Halsbury and Lord Simonds in Micklethwait, (1885) 11 Ex 452 referred to in Tenant v. Smith (1892) AC 150 154 (HL) and St. Aubyn v AG, (1951) 2 ALL ER 473(HL) as well as in case of Member Secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd. reported in (1989) 1 SCC 44 and Saraswati Sugar Mills v. Haryana State Board reported in (1992) 1 SCC 418, it is held that "taxing statute is to be strictly construed". It is observed by Lord Wensleydale that "the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."*

54. *Rowlatt J, has expressed the principle in following words "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

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".

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 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.*

77. *In case of Munjaal Manishbhai Bhatt v. Union of India reported in (2022) 104 GSTR 419 (Guj), this court has observed that the intention of introduction of GST regime was not to change the basis of taxation of the Value Added and Service Tax regime and that supply of land in every form was excluded from the purview of GST Act.*

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.

81. *Therefore, 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.*

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."*

5.5 The appellant submitted a copy of their declaration dated 18th October, 2016, which mentions receipt of consideration of Rs. 6,29,44,000/- for surrendering and relinquishing their Tenancy and Occupancy Rights in respect of building at 220F, Reay Road, Old Atlas Mill Compound, Mumbai to the owner Sumer Buildcorp Pvt Ltd. Para 2&3 of the said declaration are reproduced below:-

"2. We say that we have surrendered and relinquished all our tenancy and occupancy rights in respect of the under mentioned premises to the Owners - SUMER BUILD CORP PVT. LTD, and have vacated and handed over possession of the same to them. We further state and declare that the Owners have paid to

us the consideration of Rs. 6,29,44,000/- (Rupees Six Crores Twenty Nine Lakhs Forty Four Thousand Only) (Less TDS 1% i.e. Rs. 6,29,440/- making amount of Rs. 6,23,14,560/-) by Pay Order No. 183600 dated 12.07.2016 drawn on HDFC Bank in the name of "M/s, Supertex Woven Industries". We have transferred, surrendered and relinquished possession of the said premises to the Owners - SUMER BUILD CORP PVT. LTD., and we hereby state and declare that we no longer have any right, title and interest of any nature whatsoever in respect of the said premises more particularly described in the Second Schedule hereunder written or any other premises in "Atias Mills Compound" situate at Reay Raod, Mazgaon, Mumbai, which said property is more particularly described in the First Schedule hereunder written.

3. *We state and declare that the Owners -Sumer Buildcorp Pvt. Ltd. and/or their nominees are entitled to use and occupy the said premises described in the Second Schedule hereunder written and deal with the same in such manner as they deem fit and proper, the same having been surrendered by us to them."*

The above declaration shows that the consideration amount received by the appellant is a sort of compensation received from the owner for surrendering and relinquishing Tenancy and Occupancy Rights.

5.6 We also find that CESTAT Kolkata in the case of M/s Bhaskar steel and Ferro Alloys Pvt Ltd., Shri Nikunj Beriwal, Director reported at 2022(8) TMI 989 have dealt with the same issue. In this case, Revenue treated the consideration amount received in lieu of vacating the premises which was on rent was treated as compensation for surrender of their tenancy right and service tax was demanded under Section 66E(e) treating them as declared service. The Tribunal in this case held that since such a consideration out of surrender of tenancy right is on account of immovable property and therefore, the same cannot be considered as service as per definition under Section 65B(44) of the Finance Act, 1994 and no service tax is payable. The relevant findings of the said order in respect of M/s Nilu Construction Pvt Ltd, Kolkata and M/s Siddharth Land and Building Pvt Ltd. are reproduced below: -

"H. Nilu Construction Pvt Ltd.

(1). The appellant were occupying a portion of godown space, as tenant, owned by Mis Nilu Construction Pvt Ltd, Kolkata. M/s Nilu Constructions Pvt Ltd wanted to erect a new building on the said premises, The appellants agreed to vacate

the said premises on payment of Rs.90,00,000/- as compensation for surrender of their tenancy rights. As per the decision of Allahabad High Court in the case of Kanhiya Lal and Anr (supra), this cannot be considered as 'service' and, hence, no tax is payable.

(2). Further, surrender of tenancy rights is liable to capital gains tax as per the Income Tax Act, 1961 [CIT vs D.P.Sandu Brothers- MANU/SC/0070/2005)

(3). Further, it also cannot be said that the appellants had agreed to an obligation to refrain from an act or tolerated an act or a situation or did an act. The Principal Commissioner has not clarified how these clauses are applicable in the case of the appellants.

I. M/s Siddhartha Land and Building Pvt Ltd.

(1). The appellants were in occupation, as a tenant, of 4,000 sq ft of space in a building in Kolkata, owned by M/s Siddhartha Land and Building Pvt Ltd. M/s Siddhartha Land and Building Pvt Ltd wanted to re-develop the land and construct a multi-storeyed building. They requested the appellants to vacate the premises. The appellants surrendered their tenancy rights on receipt of compensation of Rs.3,25,00,000.

(2). It is established law that surrender of tenancy rights is not covered under clause (e) of Section 66E of the Finance Act 1994.

(3). Further, as per the decision of Hon'ble Allahabad High Court in the case of Kanhiyalal and Anr (supra), the tenancy rights are also benefits arising out of the immovable property and outside the definition of 'service' and, therefore, cannot be subjected to Service Tax.

(4). Surrender of tenancy rights is liable to capital gains tax as per the Income Tax Act. 1961 [CIT vs D.P.Sandu Brothers- MANU/SC/0070/2005]”

5.7 In view of the above, we hold that the activity of transfer of Tenancy and occupancy rights in respect of immovable property situated at 220F, Reay Road, Old Atlas Mill Compound, (West)Mumbai does not come within the definition of 'service' as defined under Section 65B(44) of the Finance Act, 1994. Consequently, the amount received in lieu of transfer of Tenancy and occupancy right is not liable to service Tax, therefore, we allow the appeal of the appellant and set aside the impugned order. Since, the appeal succeeds on merit itself, we are not expressing any opinion about invocation of extended period of limitation in this case.

6. The Appeal allowed with consequential benefits, if any.

(Pronounced in the open court on 30.09.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha