

HC - SCN to be set aside as assignment of leasehold rights in industrial plot is transfer of immovable property and not supply under GST.

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REFER THE DECISION OF THE HON'BLE GUJRAT HIGH COURT IN THE CASE OF

Alfa Tools Pvt. Ltd. V/s Union of India, decided on 6-3-2025

Key Findings of the Gujarat High Court:

1. Nature of Assignment:

The court observed that when a lessee assigns their leasehold rights, especially in long-term leases (e.g., 99 years), to a third party for consideration, it amounts to a transfer of immovable property. This is because the assignor divests all rights in the property, and the assignee steps into the shoes of the original lessee, becoming directly liable to the lessor (e.g., GIDC).

2. GST Applicability:

Such a transfer does not constitute a "supply" under Section 7(1)(a) of the CGST Act, 2017. Consequently, it falls outside the ambit of GST, as the transaction is akin to the sale of immovable property, which is neither a supply of goods nor services.

3. Double Taxation Concern:

The court highlighted that imposing GST on such assignments would lead to double taxation, as stamp duty is already levied on the transfer of immovable property. This would be contrary to the intent of the GST regime, which aims to eliminate cascading taxes.

4. Distinction from Renting:

The court differentiated between renting (which involves periodic payments and does not transfer ownership rights) and assignment (which transfers all rights and interests). While renting is considered a supply of service under GST, assignment of leasehold rights, being a transfer of immovable property, is not.

Implications:

- **For Taxpayers:** Entities involved in the assignment of leasehold rights in industrial plots can rely on this judgment to contest GST demands on such transactions.
- **For Tax Authorities:** The ruling necessitates a re-evaluation of GST applicability on similar transactions and may require policy clarifications to prevent litigation.

Conclusion:

In summary, the Gujarat High Court's decision provides a clear stance that the assignment of leasehold rights in industrial plots, where the assignor transfers all rights to the assignee, constitutes a transfer of immovable property and is not subject to GST under the current legal framework.

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