



## JSA Newsletter Indirect Tax

March 2025

### Recent rulings by courts and authorities

#### High Court

#### No GST<sup>1</sup> applicable on transfer/assignment of leasehold rights in industrial land

In the matter of *Gujarat Chambers of Commerce and Industry and Ors vs. Union of India and Ors*<sup>2</sup>, the petitioner had acquired industrial land on lease from Gujarat Industrial Development Corporation ("GIDC") for 99 (ninety-nine) years under a licensing agreement. The petitioner (original lessee) assigned its rights and interests in the industrial plot and building constructed thereon to a third party for a lumpsum consideration after obtaining approval from GIDC. Considering assignment of leasehold rights as a 'supply of service' under the GST laws, the revenue authorities sought to recover GST on the said assignment from the petitioner.

The petitioner contested the levy of GST on the ground that the assignment of leasehold rights, which is an absolute transfer of rights and interest arising out of land, amounts to transfer/sale of immovable property itself (which is outside the scope of GST as sale of land and building is neither supply of goods nor services in terms of Clause 5 of Schedule-III of the CGST Act<sup>3</sup>). Therefore, it cannot be said to be a supply of service under GST laws, nor can such transfer of rights and interests be said to be in the course or furtherance of business. It was further argued that imposition of GST on such assignment leads to double taxation, as stamp duty was already paid on the assignment of leasehold rights.

The Hon'ble Gujarat High Court ("Gujarat HC") observed the below:

1. There are 2 (two) transactions viz.: (a) when GIDC allots industrial plot along with right to occupy, right to construct, right to possess on long term lease basis, (b) when original lessee sells and transfers its leasehold rights in favour of the third-party. The first transaction is a 'supply of service' as right of ownership of land allotted by GIDC remains with GIDC which will revert on expiry of lease period and is covered under Clause 5(a) of Schedule II of the CGST Act. However, it is exempt under entry at serial no. 41 of Exemption Notification<sup>4</sup>. The second transaction is subject matter of the present petition.
2. With regard to the second transaction, the Gujarat HC observed that what is assigned by the petitioner is not only the land allotted by GIDC on lease but the entire land along with building thereon. The entire land and building are

<sup>1</sup> Goods and Services Tax.

<sup>2</sup> TS-03-HC(GUJ)-2025-GST

<sup>3</sup> Central Goods and Services Tax Act, 2017.

<sup>4</sup> Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017, provides nil rate of GST on one time upfront amount leviable in respect of service by way of granting long term lease (30 (thirty) years or more) of industrial plots by the State Government Industrial Development Corporations or undertakings to industrial units.

transferred along with leasehold rights and interest in land, which is a capital asset in the form of immovable property.

3. Gujarat HC further observed that immovable property constitutes a bundle of rights, with the right to lease being one such right. The transfer of possession or occupation by GIDC to the Petitioner remains a provision of service, and this nature does not alter, even if the lessee transfers the leasehold interest absolutely to an assignee, thereby relinquishing all rights to the land and building.
4. Gujarat HC observed that in addition to right of ownership, immovable property includes an aggregate of rights that are guaranteed and protected by further agreement or contract between the owner and the lessee. By way of assignment of leasehold rights, the Petitioner has divested all its absolute rights in the property in favour of the third-party. Therefore, interest in the immovable property in form of leasehold rights cannot be said to be different than the immovable property itself.
5. Even under the Gujarat Stamp Act, 1958, a lease exceeding 98 (ninety-eight) years is treated as equivalent to a conveyance for the sale of immovable property for stamp duty purposes.

In light of foregoing observations, the Gujarat HC held that GST is not leviable on the assignment of leasehold rights as the transaction is covered under Clause 5 of Schedule III of the CGST Act. Similarly, in the matter of *Panacea Biotech Limited vs. Union of India and Ors*<sup>5</sup>, the Hon'ble High Court of Bombay ("**Bombay HC**") quashes the adjudication order seeking to levy GST on assignment of leasehold rights and has remanded the matter for reconsideration to be based on the judgement passed by Gujarat HC above.

### **Solar power generating system is not an immovable property and the same is taxable as a composite supply**

In the matter of *Sterling and Wilson Private Limited vs. Joint Commissioner and Ors*<sup>6</sup>, the petitioner was engaged in the business of setting up of Solar Power Generating System ("**SPGS**"). Considering the supply as a 'composite supply', the petitioner paid GST at 5% thereupon and claimed refund of inverted taxes and duties. However, considering SPGS as 'immovable property', the revenue authorities treated the transaction as supply of 'works contract' services and sought to recover GST at a higher rate of 18%.

While analysing the issue, the Hon'ble Andhra Pradesh High Court ("**Andhra Pradesh HC**") observed that every 'works contract' is a 'composite supply', however, every 'composite supply' is not a 'works contract'. The distinction between the two is dependent upon the nature of the end product. If the end product is 'movable', the supply is a 'composite supply' and if it is 'immovable', it is a 'works contract'. Bearing the same in mind, the Andhra Pradesh HC further delved upon the nature of SPGS (end product in present case) as 'movable' or 'immovable' property.

Based on the meaning of the term 'movable' and 'immovable' property in other statutes and past judicial precedents, the Andhra Pradesh HC highlighted that for anything to be an 'immovable' property, it must be attached to the earth or permanently fastened to anything attached to the earth. Essentially, the following conditions must be satisfied:

1. Rooted in earth, as for trees and shrubs; or,
2. Imbedded in earth, as for walls or buildings; or,
3. Attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached.

It was highlighted that the property, which is attached to a structure embedded in the earth, would also become immovable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth.

<sup>5</sup> TS-22-HC(BOM)-2025-GST

<sup>6</sup> 2025 (1) TMI 663 – Andhra Pradesh HC

In its finding, the Andhra Pradesh HC noted that SPGS was attached to the civil foundation with an intent to provide stability to the working of SPGS and prevent vibration/wobble free operation. It was not attached to the civil foundation for the purpose of permanent beneficial enjoyment of the civil foundation.

Accordingly, it was held that SGPS was not an 'immovable property' and hence, the supply thereof was a 'composite supply'. It would not amount to supply of 'works contract' services.

## Levy of GST on license fees collected by the Electricity Regulatory Commission quashed

In the matter of *Central Electricity Regulatory Commission vs Union of India and Ors*<sup>7</sup>, the petitioner was engaged in granting licenses to transmission or distribution companies to transmit or distribute electricity, regulating electricity tariff, etc. For grant of license, the petitioner used to recover license fee from the licensee. Considering the activity of granting license as a statutory function, the petitioner treated the same as exempt from the levy of GST. However, the revenue authorities contended to the contrary and sought payment of GST on the license fee collected by the petitioner.

The Hon'ble High Court of Delhi ("Delhi HC"), observed and highlighted the below:

1. The grant of license to transmit or distribute electricity and power to regulate tariff stand statutorily vested in the petitioner. The said activities cannot be considered as an activity akin to trade, commerce, manufacture, profession, vacation, adventure, voyager as defined under the meaning of the term 'business' under Section 2(17) of the CGST Act. The petitioner is further neither Central/State Government nor local authority as defined under CGST Act. Therefore, the petitioner cannot be said to undertake the said activity in the course or furtherance of 'business'.
2. A supply would necessarily have to be of goods or services not only for consideration but more importantly in the course or furtherance of 'business'. Thus, even if the license fee were to be assumed as being consideration received, it was clearly not one obtained in the course or furtherance of 'business'.

In light of the above, the Delhi HC quashed the SCN<sup>8</sup> seeking to levy GST on licensee fee collected the petitioner.

## Karnataka High Court holds that set top boxes provided to subscribers/consumers would constitute 'transfer of right to use' set top boxes and thereby sale

The Hon'ble Karnataka High Court ("Karnataka HC") dismissed the batch of revision applications in the matter of *Tata Play Limited and Ors*<sup>9</sup>, filed against the order of the Karnataka Appellate Tribunal, Bangalore, inter alia, holding that the assessee have transferred to its subscribers the right to use set top boxes for consideration and therefore the same amounts to sale within the definition of 2(29)(d) of the Karnataka VAT Act<sup>10</sup>.

The assessee in the instant matter was a group of direct to home (DTH) service provider/cable operators. For the provision of such services, set top boxes were installed at the premises of the subscriber/consumer. Subscribers/consumers paid subscription fees for such services which were subjected to service tax. The case of the VAT<sup>11</sup> Authorities before the High Court was that the set top boxes were given to the consumer would constitute 'transfer of right to use' set top boxes for consideration and therefore qualifies 'sale' within the definition of 2(29)(d) of the Karnataka VAT Act.

While deciding the issue, the Karnataka HC answered the following questions as under:

<sup>7</sup> TS-11-HC(DEL)-2025-GST

<sup>8</sup> Show Cause Notice.

<sup>9</sup> TS-112-HC-2025(KAR)-VAT

<sup>10</sup> Karnataka Value Added Tax Act, 2003.

<sup>11</sup> Value Added Tax.

Sr. No.	Questions	The Karnataka HC answered in
1.	Whether STB <sup>12</sup> are goods within the meaning of section 2(15) of the Karnataka VAT Act?	<i>Affirmative</i>
2.	Whether the STBs are capable of being exclusively used by the subscriber?	<i>Affirmative</i>
3.	Whether right to use the STBs is transferred to the subscriber?	<i>Affirmative</i>
4.	Whether such a transfer is for a valuable consideration?	<i>Affirmative</i>

Further, the Karnataka HC negated the argument of service tax and VAT being mutually exclusive, by placing reliance on the observations made in *Imagic Creative Private Limited*<sup>13</sup> which held that payment of service tax and remittance of VAT are mutually exclusive, the nature of levies being different. However, different aspects of a single transaction can be taxed under different statutes.

## Notifications, circulars and instructions

### Clarification issued for procedure to be followed in cases pertaining to Section 128A (Amnesty Scheme) of the CGST Act

The Central Board of Indirect Taxes and Customs, vide instruction no. 02/2025-GST dated February 7, 2025, has clarified that cases where the tax due has already been paid by the assessee before the issuance of SCN and the notice or demand orders under Section 73 of the CGST Act only pertains to interest and/or penalty involved, the same will be considered for availing the benefit of section 128A of the CGST. Further, it is clarified that if the department has gone in appeal or is in the process of filing an appeal, a taxpayer who is otherwise eligible for availing the benefit of section 128A of the CGST Act, should not be denied the benefits. The intention of the said provision is to reduce litigation, and a taxpayer should not be denied the benefit of the provision on mere technicalities.

### Advisory on mandatory reporting of HSN<sup>14</sup> codes in Form GSTR-1 and GSTR-1A

GSTIN has issued an advisory dated January 22, 2025, on mandatory reporting of HSN codes at 4 (four) digit and 6(six) digit level in Table 12 of Form GSTR-1/1A from February 2025. Key points to be considered are as below:

1. Manual user entry of HSN will not be allowed;
2. HSN code can be selected from drop down only;
3. Customised description mentioned in HSN master will auto-populate in a new field called 'Description as per HSN Code';
4. Validation of value of 'business to business' and 'business to customer' supplies reported in Table 12 with values reported in different tables in Form GSTR-1/1A has also been introduced.

<sup>12</sup> Set Top Box.

<sup>13</sup> (2008) 2 SCC 614

<sup>14</sup> Harmonised System of Nomenclature.

## Courtroom updates

### Revenue files review petition in Supreme Court's safari retreats decision

In the matter of *Chief Commissioner of Central Goods and Service Tax vs. M/s Safari Retreats Private Limited*<sup>15</sup>, Hon'ble Supreme Court ("SC") had ruled on the eligibility of the taxpayers to avail ITC<sup>16</sup> of GST paid on procurement of goods and services received for construction of immovable property *vis-à-vis* specific restrictions contained in Section 17(5)(d) of the CGST Act. The SC had ruled that a taxpayer can avail ITC of GST paid on procurement of goods and/or services for construction of immovable property, if it qualifies as a 'plant', to be determined based on functionality test.

The revenue authorities have filed a review petition for the above, which is pending for hearing.

It is pertinent to note that the Finance Bill, 2025 proposes to amend Section 17(5)(d), by substituting the term 'plant or machinery' with 'plant and machinery' with retrospective effect from July 1, 2017. It has been specifically clarified that any reference to the term 'plant or machinery' in any order/decreed/judgement will be construed and always be deemed to have been construed as 'plant and machinery', to nullify the effect of the decision of the SC (*supra*).

### SC stays SCNs pertaining to gameskraft and other connected matters, and lists the same for final disposal in March 2025

The SC has listed matter in *Directorate General of Goods and Services Tax Intelligence (HQS) and Ors vs. Gameskraft Technologies Private Limited and Ors*<sup>17</sup> along with the batch of matters that stood transferred from different High Courts and the few matters directly filed before the SC for final disposal on March 18, 2025. Further, the SCNs impugned in the said batch petitions were also stayed till the final disposal of the matters at the SC. The issue before the SC pertains to the levy of GST on online gaming.

The Karnataka HC in *Gameskraft Technologies Private Limited vs. Directorate General of Goods and Services Tax Intelligence and Ors*<sup>18</sup> had *inter alia* held that 'rummy' played online for a monetary stake constitutes a game of skill, as it involves the player's capacity to strategise, anticipate moves, and demonstrate attentiveness and hence, outside the scope of 'supply' under Section 7(2) read with Schedule III of the CGST Act. The Karnataka HC further ruled that the GST is applicable solely on the fees paid by a player to the online platform.

### SC grants leave in SLP<sup>19</sup> filed against Madras High Court decision on issue pertaining to levy of SWS<sup>20</sup> on goods imported against MEIS<sup>21</sup> and SEIS<sup>22</sup> duty-credit scrips

The SC in *Gemini Edibles and Fats India Private Limited vs. Union of India and Ors*<sup>23</sup> has granted leave against Madras High Court decision which held that duty exemption against MEIS/SEIS duty credit scrips are confined in their operation only to customs duty and cannot be understood as resulting in exemption of SWS<sup>24</sup>.

The Petitioner has contended that SWS is not payable in respect of imports made against duty-credit scrips actualised *vide* notification no. 24 of 2015 dated April 8, 2015, under Section 25(1) of the Customs Act<sup>25</sup>, dealing with grant of exemption, as there is neither a levy nor collection of customs duty.

<sup>15</sup> TS-622-SC-2024-GST

<sup>16</sup> Input Tax Credit.

<sup>17</sup> Special leave to appeal (C) Nos.19366-19369/2023

<sup>18</sup> Writ petition no. 19570 OF 2022

<sup>19</sup> Special Leave Petition.

<sup>20</sup> Social Welfare Surcharge.

<sup>21</sup> Merchandise Exports from India Scheme.

<sup>22</sup> Service Exports from India Scheme.

<sup>23</sup> SLP (Civil) Diary No. 52798/2024

<sup>24</sup> Social Welfare Surcharge.

<sup>25</sup> Customs Act, 1962.



## Bombay HC stays the circular issued regarding corporate guarantee provided by parent company to its subsidiaries

The Bombay HC in ***Vedanta Limited vs. Union of India and Ors***<sup>26</sup>, has stayed the effect and operation of circular no. 204/16/2023-GST dated October 27, 2023, which clarified that the extension of corporate guarantee by one company to bank/financial institution for providing credit facilities to another related company, the said activity was to be treated as supply of services by the former company to the latter related company under Schedule I of the CGST Act, even when made without consideration.

The petitioner has argued that the activity of holding company providing guarantee is towards protecting the company's own investment and as such it is not a 'supply' qualifying for taxation under the CGST Act or Article 246A of the Constitution of India. Further, valuation of supply at 1% of the guaranteed amount is an onerous and confiscatory measure for the company giving guarantee. Accordingly, the vires of Rule 28(2) of CGST Rules and the circular is being challenged.

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<sup>26</sup> 2025 (1) TMI 590 – Bombay HC



18 Practices and  
41 Ranked Lawyers



7 Ranked Practices,  
21 Ranked Lawyers



12 Practices and 50 Ranked  
Lawyers



14 Practices and  
12 Ranked Lawyers



20 Practices and  
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