



No GST on transfer of development rights by landowner to developer

M/s Shrinivasa Realcon Private Ltd. Vs. Deputy Commissioner Anti-Evasion Branch, CGST & Central Excise Nagpur & Ors.¹

The Bombay High Court, Nagpur Bench ('High Court'), in a recent ruling, has held that no GST is payable on services supplied by way of Transfer of Development Rights ('TDR') or Floor Space Index ('FSI').

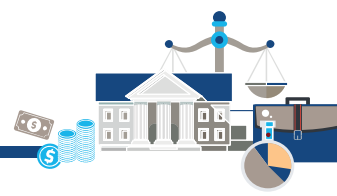
Facts of the case

- Srinivasa Realcon Private Limited ('Petitioner'), had entered into an Agreement of Sale ('Agreement') with the Landowner for development of a plot.
- As per the Agreement, the Petitioner was allowed to develop the plot of land in return for a monetary consideration and 2 apartments therein.
- The Petitioner received notice and consequently an order alleging that the transaction was liable to GST under the Reverse Charge Mechanism ('RCM') under Entry 5B of Notification 11/ 2017 – Central Tax (Rate) dated June 28, 2017 ('the Notification') in terms of which GST is payable by the Promoter under RCM on *"services supplied by any person by way of TDR or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter"*.

Arguments in the case

- The Petitioner contended that the transaction does not fall within the scope and ambit of Entry 5B so as to attract GST as all that the Agreement indicates is a service supplied by any person by way of TDR/ FSI for development of a plot of land. In other words, the agreement is purely a development agreement, where the developer constructs the project using the landowner's FSI.
- Entry 5B of the Notification applies only when there is a service by way of transfer of TDR/ FSI to a developer. The Petitioner is not receiving any such service but rather providing construction service under a development contract.
- TDR, as defined under Regulation 11.2.1 of the Unified Development Control and Promotion Regulations ('UDCPR'), has a very specific technical meaning involving compensation in FSI. The agreement in question does not fall under this category.
- The Revenue on the other hand argued that there is an implied transfer of rights, attracting levy under Entry 5B of the Notification.

¹TS-256-HC(BOM)-2025-GST



Discussion and Findings

- The High Court perused the language of Entry 5B and indicated that it relates to services which can be said to be supplied by any person by way of supply of TDR/ FSI for construction of a project by a promoter.
- The expression “Transfer of development rights” in Entry 5B, would only relate to TDR as contemplated in the UDCPR provisions.
- The transfer of TDR / FSI as contemplated by Entry 5B, cannot be related to the rights which a

developer derives under the agreement of development for constructing the building for the landowner, in lieu of the landowner agreeing to permit the developer to transfer certain built-up units.

- Clause 18 merely mandates compliance under the Maharashtra Apartment Ownership Act, 1970 and does not evidence any transfer of TDR/FSI.
- The High Court therefore allowing the petition, quashed the show cause notice and order levying the GST.

Dhruva Comments

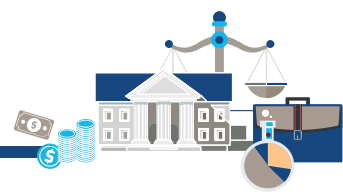
The Hon’ble High Court has made a critical distinction between the standalone transfer of TDR/FSI and the transfer of development rights under a Joint Development Agreement (‘JDA’), relying on the definition under the UDCPR.

The Hon’ble Bombay High Court has recently stayed another matter in the case of **Nirmal Lifestyle Developers v. Union of India & Ors** in the context of revenue sharing arrangements relying on the decision of Hon’ble Gujarat High Court in the case of **Gujarat Chamber of Commerce and Industry v. Union of India & Ors**.

The Hon’ble Telangana High Court in the case of **Prahitha Construction v. Union of India and Ors**.² had previously held that the transfer of the development rights to developers by way of JDA with the landowners, would fall within the purview of taxable service under GST. This Apex Court subsequently affirmed this decision.

Presently, the transfer of development rights in a JDA is treated as a taxable supply under GST, notwithstanding the fact that construction services rendered by the developer to the landowner are also subject to GST. The High Court’s reasoning introduces a nuanced interpretation that could pave the way for a more equitable tax treatment, though its acceptance will ultimately depend on the evolution of jurisprudence in this area.

² 2024 (2) TMI 902 - TELANGANA HIGH COURT



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