

## **Athena Knowledge Sharing | AKS 2024**

### **Development Rights are leviable to GST - Telangana High Court**

M/s. Prahitha Constructions Private Limited, WP No. 5493 of 2020

#### **A. Limited contentions of the Petitioner**

1. Transfer of Development Rights of land by the land owners to the petitioner by way of a Joint Development Agreement ('JDA') should be treated as sale of land by the land owners.
2. Notification No. 4/2018-CT(R) defining the time of supply of Development Rights is ultra vires the Constitution of India.
3. No Tax Rate is provided for Development Rights.

#### **B. Issues taken up for deliberation by the Hon'ble Telangana High Court**

4. The issues deliberated upon and decided in the Writ Petition are:
  - a) Whether the transfer of Development Rights is in the nature of transfer of immovable property or the nature of services would fall within the scope of GST?
  - b) Whether the transfer of Development Rights can be safely brought within the purview of an outright sale of land?

#### **C. Views expressed by the Hon'ble Telangana High Court**

5. Transferring of the Development Rights does not result in transfer of ownership rights. The transfer of Development Rights is a service and not an outright sale of immovable property.
6. The contention that the JDA eventually results in sale of land to the Developer is incorrect and misleading. It is only by way of a separate conveyance deed, that too, after the completion of the development activity the undivided share of land to the extent the petitioner is entitled, could be transferred and not solely by virtue of the JDA.

7. That the sale of land/transfer of land or undivided share of land would get executed only after issuance of completion certificate of the project. This itself would give a clear indication that the services rendered by the petitioner in execution of JDA were supplied prior to the issuance of completion certificate and would thus be amenable to GST.
8. Thus, the execution of the JDA between two parties by itself would not amount to result in transfer of ownership. The transfer of Development Rights is hence a service under GST Law which the landowner is offering to the developer and that too for a consideration.

**D. Author's View**

9. It is pertinent to note that as far as the concept of Development Right as evolved under Service Tax & GST is concerned, it is commonly understood as a right to construct and develop the structure and other infrastructure over a piece of land.
10. **The Developers & Landowners must understand that there is no express exclusion for non-taxability of the so-called Development Rights under the GST Regime.**
11. A land has various rights attached to it. Some rights are right to occupy, right to use, right of easement, right to lease, right to develop, right to sale, right to transfer, right to possess etc. In common parlance, whenever a transaction of transfer of land is made, all rights which are bundled with land are also sold including Development Rights. However, mere transfer of Development Rights which is one of the rights that arises out of land are not considered to be sale of land, in common parlance.
12. All these rights independently also, are defined as immovable property separately under the General Clauses Act. Development Rights are independently recognized as immovable property but it cannot be equated with sale of land which is a separately identifiable immovable property. **Therefore, arguing on the limited ground that Transfer of Development Rights should be treated as sale of land by the land owners has not put much force in the matter.**
13. **The view of the Hon'ble High Court to the extent that Development Rights are not immovable property requires reconsideration and further deliberation, as it is**

**already settled in various judicial pronouncements that Development Rights are immovable property.**

14. There are other multiple aspects which are additionally required to be presented & argued before the Courts to get relief from the following incorrect understanding developed by the Department/Government that-
- a. The Landowner only transfers Development Rights to the Developer and;
  - b. The entire consideration received by the Landowner is only towards transfer of Development Rights.

***Knowledge Sharing By:***



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