

## **DETAILED EXPLANATION OF THE COURT'S REASONING IN THE CASE:**

The Gujarat High Court's reasoning in declaring that the assignment of leasehold rights in industrial plots is not subject to GST is rooted in a detailed analysis of legal provisions, judicial precedents, and the nature of the transaction itself. Here's a more granular explanation of the reasoning:

### **1. Nature of Leasehold Rights**

- **Defined as Immovable Property:**
  - Leasehold rights are recognized under Section 105 of the Transfer of Property Act, 1882 as a transfer of a right to enjoy immovable property.
  - The court highlighted that any interest or benefit arising from land qualifies as immovable property under Section 3(26) of the General Clauses Act, 1897.
  - By transferring leasehold rights, the assignor relinquishes all claims or interests in the property, making it a transfer akin to the sale of immovable property.

### **2. Scope of GST and exclusion of Immovable Property**

- **Schedule III of GST Act:**
  - The court referred to Schedule III of the GST Act, which excludes transactions involving the sale of land and building (subject to certain conditions) from the definition of "supply."
  - Since leasehold rights are inherently tied to the land and form part of immovable property, their assignment is also excluded from the purview of GST.
- **Intent of Legislature:**
  - The legislative intent behind GST was to tax the supply of goods and services. Immovable property was consciously excluded to prevent overlapping taxation with state-imposed stamp duty.
  - The court reasoned that including leasehold rights under GST would expand the definition of "service" beyond its intended scope, conflicting with constitutional and legislative principles.

### **3. Distinction between Supply of Goods/Services and Immovable Property**

- **Supply of Services under Section 7:**
  - For a transaction to qualify as a "supply of service," it must involve an activity performed for another party in the course of business.
  - The court emphasized that the assignment of leasehold rights involves a permanent transfer of interest in the property and does not retain any residual rights for the assignor. This extinguishment of rights is characteristic of a "sale" rather than a "service."
- **Not a business activity:**

- The court noted that assigning leasehold rights is not a business activity for the assignor. It is a standalone transaction involving the transfer of an interest in immovable property.
- This lack of continuity, regularity, or connection to business further removes the transaction from the ambit of GST.

#### **4. Judicial precedents and definitions**

- **Reliance on Supreme Court and High Court judgments:**
  - The court relied on prior decisions where similar assignments were held as transfers of immovable property. For instance:
    - Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.: Defined immovable property to include benefits arising from land.
    - Gopal Saran v. Satyanarayana: Confirmed that assignments involve a complete transfer of rights, excluding any element of service.
- **Service defined under Section 2(102):**
  - The court observed that "service" excludes money, securities, and goods and does not encompass an absolute transfer of property.
  - The assignment of leasehold rights, being a complete and irrevocable transfer, does not fit the definition of service.

#### **5. Double taxation and economic policy**

- **Avoiding double taxation:**
  - The court addressed concerns of double taxation, highlighting that stamp duty is already levied on such assignments as per state laws. Levying GST would lead to duplicative taxation, violating principles of economic fairness and tax policy.
  - The legislative framework under GST did not intend to disrupt this balance by imposing GST on immovable property transactions.
- **No revenue loss to the State:**
  - The court reasoned that treating the transaction as a sale of immovable property ensures proper revenue collection through stamp duty without compromising GST objectives.

#### **6. Practical and Constitutional Considerations**

- **GIDC's Role and Long-Term lease framework:**
  - The court acknowledged the unique role of industrial development corporations like GIDC in leasing land for industrial use under long-term agreements (99 years).
  - Such leases are structured to facilitate industrial growth and economic activity, making them distinct from commercial leasing arrangements.
- **Constitutional Authority:**
  - The court relied on Article 246A of the Constitution, which empowers states to levy taxes on immovable property transfers. Including leasehold rights under GST would encroach upon this domain, creating potential conflicts.

## **7. Final Determination**

The High Court concluded that:

- Assignment of leasehold rights constitutes a transfer of immovable property, not a supply of goods or services.
- The transfer does not fall under Section 7 of the GST Act as it is not a service provided in the course of business.
- Consequently, GST is not applicable to such transactions, and the notices/summons issued by the authorities were quashed as being without jurisdiction.

This ruling reinforces the principle that transactions involving immovable property are distinct from taxable supplies under GST and cannot be artificially brought into its ambit. It provides clarity and relief to industrial entities engaging in such assignments.