



Dimensions – 52nd Edition

Ruling / Judgment under GST era:

1. M/s. Vilas Chandanmal Gandhi - Maharashtra¹

| | |
|--------------------------------|---|
| Issue for Consideration | <ul style="list-style-type: none"> Whether GST is leviable on sale of Transferable Development Rights (TDR) / Floor Space Index (FSI) received as consideration for surrendering the joint rights in land in terms of Development Control Regulations? If yes, what will be the classification and the applicable rate of tax under GST? |
| Discussion & Ruling | <p>Discussion:</p> <ul style="list-style-type: none"> The Applicant was an owner of the land situated within the limits of Municipal Corporation of Pune City (PMC). The Applicant entered into a Joint Development Agreement (JDA) with M/s. Amar Builders and Developers (Developer) under which the development rights in land were assigned / transferred to the Developer for a consideration in the form of 45% of the sale proceeds of the developed projects. The underlying land for which JDA was entered into was held under reservation by the PMC. Upon realising that vacation / removal of reservation may not be possible, the Applicant and the Developer surrendered their respective rights in the said land in favour of PMC against which PMC awarded them TDR / Additional FSI as compensation by issuance of Development Right Certificates (DRCs). Subsequently, the Applicant entered into an agreement / deed of assignment to sell the proportionate TDR / Additional FSI awarded by PMC to Vamona Developers Pvt. Ltd. (VDPL) and share the sale proceeds in the agreed ratio. The Applicant had initially not charged GST to VDPL but subsequently raised GST invoice on VDPL who stated no GST was payable on sale of TDS / Additional FSI. |

¹ Order no. 40 dated January 15, 2020 [2020-VIL-31-AAR]



- Accordingly, the Applicant approached the Authority to determine the levy of GST on such transaction. The Applicant contended as follows:

Not leviable to GST:

- Sale of TDR / Additional FSI being benefits arising out of land are covered under clause 5 of schedule III of the CGST Act, 2017 and therefore, cannot be treated as goods or services so as to be taxed under GST.

Leviable to GST

- The Applicant also made alternate submissions stating that the term 'service' is wide enough and covers everything other than goods, money and securities and hence, supply of TDR / Additional FSI can be considered as supply of service;
 - Reliance was placed upon various Notifications² to state that GST was payable on supply of TDS / FSI;
 - The services would be classified under Chapter heading 9972 and taxable at the rate of 18%.
- The Authority observed as follows:
 - As per Serial no.7 of the FAQs on real estate issued vide F. No. 354/32/2019-TRU dated May 14, 2019 GST is payable on transfer of TDR / FSI at the rate of 18%;
 - In terms of Notification no. 5/2019 - Central Tax (Rate) dated March 29, 2019, supply service by way of TDR / Additional FSI by any person to promoter are taxable under reverse charge mechanism.

Ruling:

GST is leviable on sale of TDR / FSI received as consideration for surrendering the joint rights in land in terms of Development Control Regulations, and taxable under Chapter heading 9972 at the rate of 18%.

**Dhruva
Comments /
Observations**

- The instant ruling confirms GST liability on transfer of TDR / FSI on Applicant despite discussing reverse charge provisions.
- A similar ruling prior to introduction of reverse charge provisions has also been given in the case of *Nforce Infrastructure Pvt. Ltd*³.
- It remains to be tested before the higher forums as to whether such rights arising out of land can be regarded as an immovable property and accordingly not liable to GST.

2. M/s Lalitha Muraleedharan v. Range Forest Officer, Marayoor and Others⁴

**Issue for
Consideration**

- Whether the supply of goods to a unit in SEZ pursuant to confirmation of sale under e-auction in favour of the Petitioner is an inter-state supply or intra-state supply?

² Notification no. 4/2018 Central Tax (Rate) dated January 25, 2018; Notification no. 4/2019 Central Tax (Rate) dated March 29, 2019; Notification no. 5/2019 Central Tax (Rate) dated March 29, 2019

³ 2019 (20) G.S.T.L. 184 (A.A.R. - GST)

⁴ 2020 (1) TMI 928 - The High Court of Kerala



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|----------------------------------|---|
| | <ul style="list-style-type: none">• Whether the demand of IGST on the sale price from the Petitioner for completing the sale is legally justifiable? |
| Discussion & Judgment | <p>Discussion:</p> <ul style="list-style-type: none">• The Petitioner, engaged in manufacture of natural and essential oils, food supplements, aromatic chemicals etc., is a proprietrix of an industrial unit located in Madras Export Processing Zone (MEPZ). MEPZ is a notified Special Economic Zone (SEZ) earmarked for 100% export industrial unit.• The Petitioner participated in the e-auction of sandal wood conducted by the Respondents at Government Sandal Depot (GSD), Marayoor. On successful bidding at the auction, the Petitioner was called upon to comply with the conditions of sale and pay the sale value, Forest Development Tax (FDT) and IGST.• The Petitioner addressed a letter to the Respondents to seek clarification on payment of IGST on the sale price. The Respondents replied to the clarifications sought citing the relevant provisions of the IGST Act, 2017 and insisted for payment of IGST on the goods purchased by the Petitioner. Aggrieved by the demand for payment of IGST, the Petitioner filed a Writ Petition before the Hon'ble High Court.• The Respondent submitted that the Petitioner, knowing all the terms and conditions, participated in the e-auction and being the successful bidder could not raise objections on the applicable conditions therein. Further, the supply of goods being completed at GSD, Marayoor, the sale has been completed within the state. Therefore, the Petitioner has to pay IGST and subsequently claim refund of the same.• The Hon'ble High Court observed as under:<ul style="list-style-type: none">- GST, being a destination-based tax, tax is payable basis the location where the goods or services are being consumed. Placing reliance on section 7(1) and 8(1) of the IGST Act, 2017 read with section 10 of the IGST Act, 2017 the Hon'ble High Court stated that a transaction cannot be treated as an intra-state transaction in case such transaction either originates or terminates in an SEZ;- Section 10(1)(a) of the IGST Act, 2017 provides that the place of supply of goods shall be the location where the movement of such goods terminates for delivery to the recipient in cases of supply involving movement of goods. In the instant case, goods are purchased by the Petitioner for delivery in the industrial unit located in SEZ. The handover of goods upon payment of should be assumed to be a delivery for onward movement of goods to the SEZ. Therefore, for the purpose of taxation, termination of movement of goods must be considered and not the acceptance of goods by the Petitioner at Government Sandal Depot, Kerala;- Placing reliance on section 2(23) read with section 16 of the IGST Act, 2017 the Court observed that it is for the parties to the transaction falling under section 16 of the IGST Act, 2017 to follow the tax treatment option provided. Further, exports being the priority of the country, any tax burden should not be exported along with the goods or services; |



- In relation to demand of IGST, the Hon'ble High Court observed that under GST law supplies to SEZ unit / developer are treated at par with physical exports. To compete with the world market, the exporting units need raw materials without payment of taxes and duties. Denial of zero-rated tax benefit to the Petitioner or calling upon the Petitioner to pay IGST and then claim refund by the Respondents is contrary to the statutory scheme;
- The Hon'ble High Court also observed any intra-state movement of goods concluding delivery to the recipient in SEZ comes under the purview of IGST and to the same effect is inter-state supply of goods or services to an SEZ.

Judgment:

- The transaction was held to be a zero-rated supply of goods and the Petitioner was directed to comply with the conditions except deposit of IGST and communicate the same to the Respondents with a request for delivery of the goods.
- The Petitioner was also directed to comply with all the statutory obligation in relation to movement of goods without IGST to ensure that there is no diversion in movement of goods resulting in evasion of tax.

**Dhruva
Comments /
Observations**

The judgment lucidly explains the principles of place of supply in case of movement of goods being one of core conditions so as to determine the type of tax applicable (i.e. CGST and SGST or IGST).



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