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BOMBAY HC (NAGPUR BENCH): GST SCN ON ASSIGNMENT OF MIDC LEASEHOLD RIGHTS QUASHED; TRANSFER OF LEASEHOLD RIGHTS NOT “SUPPLY OF SERVICE”

The Hon’ble Bombay High Court, Nagpur Bench in ***Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur-1 & Anr., W.P. No. 2145 of 2025*** (Order dated 09.01.2026) has quashed the Show Cause Notice issued under Section 74(1) of the CGST Act, 2017, proposing GST demand on the assignment/transfer of leasehold rights in an MIDC plot.

The Hon’ble Court held that assignment of leasehold rights (for 95 years) with the consent of MIDC amounts to transfer of benefits arising out of immovable property, and therefore cannot be treated as a taxable service under GST.

Key Findings by HC:

- The impugned SCN under Section 74(1) proposing GST on assignment of 95-year MIDC leasehold rights was

held unsustainable since the transaction amounts to transfer of benefits arising out of immovable property and not a taxable “service” under GST.

- The Court noted that the SCN itself admits the transaction is not a sub-lease, as the petitioner's rights stood extinguished; hence, reliance on Schedule II and classification under “other miscellaneous services” (Notification 11/2017-CT(Rate)) was misplaced.
- It was further held that the transaction was not in the course or furtherance of business, thereby failing the basic requirement of “supply” under Section 7 of the CGST Act.
- The Court followed the ***Gujarat High Court ruling in Gujarat Chamber of Commerce and Industry v. Union of India, (2025) 170 taxmann.com 251 (Gujarat)*** and held the view binding on authorities in Maharashtra, relying upon ***Commercial of Income-Tax, Vidarbha v. Smt. Godavari Devi Saraf, (1978) 113 ITR 589.***
- Resultantly, the Writ Petition was allowed, the SCN was quashed, and Rule was made absolute.

VA Comments:

The order is a strong check on the Department's expanding tendency to issue Section 74 SCNs on transactions involving assignment of long-term leasehold rights in industrial development corporation lands (MIDC/GIDC etc.). The Hon'ble Court correctly treats the transaction as transfer of rights / benefits in immovable property, and not as a service of leasing/renting.

Further, the Hon'ble Court's finding on absence of "course or furtherance of business" is particularly relevant, as many such assignments occur as part of industrial restructuring/exit and are not "supplies" in the regular commercial stream.

Interesting to note:

The Principal Bench of the Bombay High Court has already admitted the issue, issued Rule and granted ad-interim relief to the Petitioners. The batch matter is presently listed for hearing on 06 February 2026. However, it is additionally noteworthy that the present Nagpur Bench order does not refer to the batch matters pending before the Principal Bench, despite the issue being common.

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OUR OFFICES

DELHI

1st, 9th & 11th Floor,
Mohan Dev Building,
13, Tolstoy Marg,
New Delhi - 110001, India,

TEL: +91 11 42492525,
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre,
Dr. S. S. Rao Road, Parel,
Mumbai - 400012, India,

TEL: +91 22 42134101,
mumbai@vaishlaw.com

BENGALURU

Bhive Premium
Ramanashree (MG Road) No. 2/1,
Brunton Road, Off MG Road
Opposite Old Passport Office
Bengaluru - 560001, India

TEL: +91 80409 03588/ 89
bangalore@vaishlaw.com



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