

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12047 of 2024

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY**

Approved for Reporting	Yes	No

ALFA TOOLS PRIVATE LIMITED
Versus
UNION OF INDIA & ANR.

Appearance:

MR MONAAL J DAVAWALA(6514) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 2
DS AFF.NOT FILED (N) for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY**

Date : 06/03/2025

**ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE D.N.RAY)**

1. Heard learned advocate Mr.Monaal J. Davawala for the Petitioner and learned advocate Mr. Deepak N. Khanchandani for the Respondent No.2.

2. Rule returnable forthwith. Learned advocate Mr.Deepak N. Khanchandani waives service of notice of rule on behalf of the

Respondent No. 2. With the consent of learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is very short.

3. The petition has been filed under Article 226 of the Constitution of India with the following prayers :-

- a) *quash and set aside the impugned SCN dated 11.07.2024 issued by the Respondent No. 2 and declare both to be ex-facie illegal and without jurisdiction; and/or at Annex-A.*
- b) *hold and declare that the Respondents are not entitled to charge Goods and Service Tax on the transaction entered into by the petitioner of relinquishment/assignment of the long-term leasehold rights under the provisions of the Goods and Service Tax, 2017; and/or*
- c) *pending the hearing, admission and final hearing of the petition, be pleased to stay the inquiry and/or further proceedings and all other consequential action being or likely to be undertaken by the Respondents pursuant to the Impugned SCN; and/or*
- d) *any other and further relief deemed just and proper be granted in the interest of justice;*
- e) *to provide cost of the petition.*

4. The brief facts of the case are as follows:

4.1 The Petitioner is a private limited company, *inter alia* engaged

in the business of manufacturing Cutting Tools. In furtherance of its business, the Petitioner was allocated an industrial plot, bearing Plot No. 179, vide a Lease Deed dated 27.09.1978, executed with the Gujarat Industrial Development Corporation (GIDC) for a period of 99 years, commencing from 27.03.1978.

4.2 After enjoying the possession of this plot for over 39 years, the Petitioner assigned its leasehold rights in the Demised Premises to one Beta Poly Plast Private Limited, vide a Deed of Assignment dated 28.03.2018, for a consideration of Rs.75,00,000/-. In furtherance of this, the GIDC issued the final transfer order dated 30.03.2018, which confirmed the aforesaid transfer of the demised premises to Beta Poly Plast Pvt. Ltd.

4.3 Subsequently, the Petitioner applied for *suo motu* cancellation of its GST Registration, which was accepted by the Commercial Tax Officer *vide* an order of cancellation of the registration dated 18.01.2021.

4.4 The Petitioner was served with a letter dated 27.06.2024,

issued by the Respondent No. 2, after more than 3 years from the date of cancellation of the GST registration, whereby, the Petitioner was called upon to deposit the GST by 03.07.2024, on the consideration amount received by the Petitioner towards assignment of leasehold rights in the favour of the Assignee *vide* the Deed of Assignment.

4.5 In response to the aforesaid communication and in compliance with the letter dated 27.06.2024, the Petitioner addressed an email to Respondent No. 2 on 03.07.2024, requesting a period of 4 weeks to reply to the letter.

4.6 The Respondent No.2 issued the Impugned Notice seeking further explanation with a further period of 30 days as to why such tax together with the interest and penalty should not be levied on the Petitioner. The Petitioner, with a prayer to quash and set aside the said notice, has filed this Petition.

5. Mr. Monaal J.Davawala, learned Counsel for the petitioner submitted that the issue of transfer of leasehold rights, not falling

within the scope and ambit of “supply” with reference to Section 7 of the CGST Act stands concluded by the recent decision of this Court in the case of **Gujarat Chamber of Commerce and Industry Vs. Union of India** reported in **2025 SCC Online Guj 537**, which is clearly in the petitioner’s favour. In the further hearing of the matter, Mr. S.N.Soparkar, learned Senior Advocate appearing for and on behalf of Mr. Monaal Davawala further submitted that, in any case, the impugned show cause notice dated 11.07.2024 is barred by time. Mr. Soparkar, learned Senior Advocate referred to the provisions of Sections 73 and 74 of the Central Goods & Services Tax Act (for short “**CGST Act**”) to submit that the impugned show cause notice is clearly barred by limitation under section 73(10) of the Act and further, since there is no amount of tax, which is allegedly not paid or short paid by the petitioner by reason of fraud or any wilful misstatement or suppression of facts on the part of the petitioner, the impugned notice could not have been issued under Section 74 of the Act as well. Even taking the date of the order for cancellation of registration (18.01.2021) to be the start date for limitation, then also the impugned show cause notice dated

11.07.2024 is well beyond the limitation of the three years prescribed under Section 73(1) of the Act.

6. Mr. Dipak Khanchandani, learned advocate appearing for the respondent No.2 is not able to controvert the aforesaid position of law, as applicable to the facts of the present case on going through the records, we find as under:

7. **DISCUSSION & FINDINGS :-**

From the Deed of Assignment dated 28.03.2018, it can be seen that the entire rights under the said property had been comprehensively transferred by the petitioner to a third party. The relevant portion of the Deed of Assignment which is germane to the present controversy is quoted hereinbelow :-

“NOW THIS DEED WITNESSETH that in pursuance of the consideration of Rs.75,00,000/-(the receipt whereof the Assignor/Transferor hereby admits) that the Assignor/Transferor hereby assigns/conveys unto the Assignee/Purchaser all that piece or parcel of the said property with all rights, liberties, privileges, easements and appurtenances whatsoever to the said property or any part thereof TO HOLD the said property hereby assigned/conveyed unto the Assignee/Purchaser subject to the terms and conditions of the said lease and to the performance and

observance of the covenants and stipulations therein contained and on the part of the Assignor/Transferor to be observed and performed and which henceforth on the part of the Assignee/Purchaser to be observed and

That the Assignor/Transferor has declared that the

(a) Assignment /sale is held with all clear title and paid up all dues up to date whatever obligations under the said lease and amount is outstanding and payable to the office of the local bodies, Notified Area Authority, GIDC, GEB, Sales Tax, Excise, P.F, ESIC, and central taxes or State Government taxes etc., any other financial institution is paid by the seller.

(b) That the second party hereby agrees to abide, after becoming the permitted transferee of the said corporation, the second party is bound by the said lease deed dated 27-09-1978 to the said corporation and terms and conditions set out in the same.

(c) The first party has already delivered the possession of the property with all documents thereon to the second party. The first party shall not be liable for all the cost and damages which might be suffered by the Second Party in this regard.

(d) That Assignor/seller has paid and shall pay if any remains payable all the dues of all the authorities concerned of inclusive of electric, water, drainage, GIDC charges and all other charges payable in respect of the said property.

(e) That Transferor/Assignor is hereby indemnify to the Purchaser/Assignee that now they have no claim, right, debts etc. over the said property and no litigation or dispute of any nature whatsoever is pending with regard to the said property.

(f) The said sale or transfer is valid and subsisting lease of the said premises herein before expressed to be hereby assigned express and is no wise void or voidable, and the covenants by the Assignor/Transferor absolutely.

(g) That it shall be lawful for the Assignee/Purchaser from time to time and at all times hereafter during the said term to peaceably

and quietly hold possess and enjoy the said property hereby assigned/conveyed or expressed so to be with the appurtenances and receive the rent and profits thereof for his/her own use and benefit without any eviction interruption claim or demand whatsoever from or by the Assignor/Transferor or from or by any other person or persons lawfully or equitably claiming under the law.

(h) That the Assignor/Transferor now has in himself good right and absolute power to assign the said property unto the Assignee/purchaser for the term and in the manner aforesaid.

That the said property is free and clear and freely clearly and absolutely acquitted exonerated released and forever discharged or otherwise by the Assignor/Transferor well and sufficiently saved defended kept harmless and indemnified of from and against all estates, charges and encumbrances whatever made executed occasioned or suffered by the Assignor/Transferor or by any other person or persons having or lawfully claiming under the law.

(j) That the Assignor/Transferor and all persons having or lawfully Claiming by from under the prescribed law shall and will from time to time and at all times hereafter during the said term at the request and costs of the Assignee/Purchaser do and execute or be done and executed all such further and other lawful and reasonable acts. Deeds, things, matters and assurances in the law whatsoever for further and more perfectly and absolutely assuring the said property hereby-assigned/conveyed or expressed so to be and every and absolutely assuring the said property hereby assigned/conveyed or expressed so to be and every part thereof unto and the use of the Assignee/Purchaser for the residue of said term and manner aforesaid as shall or may be reasonably required.

All the stamp duty, transfer fees and registration charges etc. shall be bear by the Assignee/Purchaser/Second party alone.

The purchaser has verified all the assets purchased by them and he/they/she is/are fully satisfied with purchased properties in all respect.

8. Thus, from a perusal of the above, it will be seen that the aforesaid Deed of Assignment is nothing but a sale/transfer of the leasehold rights in favour of the assignee by the petitioner -original lessee /assignor for valuable consideration. In the case of **Gujarat Chamber of Commerce (Supra)**, this Court had categorically held as under:-

“83. In view of foregoing reasons, assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of “immovable property” by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.

84. In view of above, question of utilisation of input tax credit to discharge the liability of GST on such transaction of assignment would not arise.”

9. In our considered view, the petitioner’s case would be squarely covered by the decision of this Court in Gujarat Chamber of Commerce (Supra) .

10. Resultantly, the petition succeeds and the show cause notice dated 11.07.2024 issued by the respondent No.2 being ex-facie illegal and without jurisdiction, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH