

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 13526 of 2024**

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M/S KABIR INSTRUMENT AND TECHNOLOGY  
Versus  
UNION OF INDIA & ORS.

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**Appearance:**

MR TARAK DAMANI(6089) for the Petitioner(s) No. 1  
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the  
Respondent(s) No. 3,4  
MR ANKIT SHAH(6371) for the Respondent(s) No. 1  
NIDHI T VYAS(7772) for the Respondent(s) No. 2,3

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

**Date : 22/01/2025**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Tarak Damani for the petitioner and learned advocate Mr. Ankit Shah for respondent No.1.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

*"8(B) YOUR LORDSHIPS be pleased to issue a writ in the nature of Mandamus and hold that the Show Cause Notice dated 09.07.2024 (Annexure A) issued by the Respondent Authorities is ex-facie illegal and without*

*jurisdiction and further be pleased to hold and declare that the Respondents are not entitled to charge Goods and Service Tax on the transaction of assignment of the long-term Leasehold rights under the provisions of the Goods and Service Tax, 2017;*

*And in the alternative,*

- (C) *YOUR LORDSHIPS be pleased to issue a writ of mandamus and hold and declare that the Respondent Authorities are liable to give Input Tax Credit under Section 16 of the Goods and Service Tax Act, 2017 as and when Goods and Service Tax is paid on the transaction of assignment of the long-term Leasehold rights to all the assignee's in whose favor the long-term Leasehold rights have been assigned;*
- (D) *YOUR LORDSHIPS be pleased to issue a writ in the nature of Mandamus and direct the Respondent Authorities to refund and re-credit the ITC in credit ledger of the Petitioner which has already been reversed by the Petitioner herein along with due interest;"*

3. Learned advocates for the respective parties, at the outset, submitted that the issue of levy of GST on assignment of the leasehold rights is now no more *res integra* in view of the decision of this Court in the case of **Gujarat Chamber of Commerce and Industries and others vs. Union of India and others in Special Civil Application No.11345 of 2023**

**and other allied matters, rendered on 03.01.2025**, wherein it is 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.”*

4. In view of the above decision, the grievance raised in this petition is required to be considered. Accordingly, as such, without going into the factual matrix as narrated in the petition, the impugned show cause notice is hereby quashed and set aside as the facts are not disputed by the respondent authority for assignment of the leasehold rights by the petitioner. The petition is accordingly disposed of. Rule is made absolute to the

aforesaid extent. No order as to costs.

**(BHARGAV D. KARIA, J)**

**(D.N.RAY,J)**

Bharat