

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6279 of 2025**

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SAURASHTRA TIN AND METAL INDUSTRIES
Versus
UNION OF INDIA & ORS.

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1

MR PARESH V SHETH(3998) for the Petitioner(s) No. 1

GOVERNMENT PLEADER for the Respondent(s) No. 2,3,4

MR PRADIP D BHATE(1523) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 06/05/2025**ORAL ORDER****(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)**

1. Heard learned advocate Mr.Dhaval Shah for the petitioner and learned advocate Mr.Dipak Khemchandani for respondent No.1 and learned advocate Ms.Shrunjal Shah for respondent Nos.2 to 4.

2. Rule returnable forthwith. Learned advocate Mr.Dipak Khemchandani waives service of notice of rule for and on behalf of respondent No.1 and learned advocate Ms.Shrunjal Shah waives service of notice of rule for and on behalf of respondent Nos.2 to 4.

3. Having regard to the controversy arising in the present petition in narrow compass, with the consent of learned advocates appearing for the respective parties, the matter is taken for final disposal today.

4. By way of the present petition, the petitioner has prayed for quashing and setting aside impugned order Reference No.ZD240225111984J dated 28.2.2025 passed by respondent No.4 under section 73 and Form GST DRC-07 (Annexure-A) and show cause notice Form GST – DRC-01 Reference No.ZD2411240674125 dated 26.11.2024 (Annexure-B) on the ground that the same is illegal and without jurisdiction.

5. Brief facts of the case are as follow.

5.1 The petitioner was allotted industrial plot No.G-613 admeasuring 26210.43 square meters at GIDC Industrial Estate at village Metoda, Taluka Lodhika by GIDC Rajkot by entering into agreement dated 6.12.1994 and the lease deed / conveyance deed / license agreement was executed on 6.12.1994.

5.2 The petitioner applied to the GIDC for transfer of the said plot i.e. plot No.G-613 admeasuring 26210.43

square meters at GIDC Industrial Estate at village Metoda, Taluka Lodhika to M/s Janani Incast by filing an application dated 13.2.2021 and accordingly the GIDC granted approval vide its order No.GIDC/RM/RAJ/TRF/FTO/LODI/342 dated 24.2.2021.

5.3 The petitioner and M/s Janani Incast executed a deed of assignment on 24.2.2021 and the petitioner received consideration of ₹13,69,65,000/- in the year 2020-21.

5.4 The petitioner neither charged nor recovered any GST from M/s Janani Incast (transferee company) on the consideration paid to the petitioner under the said deed of assignment / MOU dated 24.2.2021.

5.5 The petitioner was served with the summons under RFN:MA240923099869Z dated 21.9.2023 under the provisions of section 70(1) of the CGST/CGST, 2017 and was required to produce copies of the documents of the sub-lease of GIDC plot done during the period from 1.4.2020 to 31.3.2021 and the amount received in lieu of the said sub-lease and GST paid for such transaction.

5.6 The petitioner was served with the show cause notice in FORM DRC-01 under Reference No.ZD241124067412S dated 26.11.2024 by respondent

No.4 demanding ₹2,46,53,700/- as GST on the transfer of lease hold rights in favour of M/s Janani Incast on the premise that execution of the deed of assignment for the lease of a plot with the third party is considered as service and therefore consideration received under the MOU is considered as taxable value of supply of service and therefore is covered under the Notification No.11/2017 – State Tax (Rate) dated 30.6.2017 as per Entry No.16 Heading No.9972 as Real Estate Services are liable to tax at 9% SGST and 9% CGST.

5.7 The petitioner replied to the said show cause notice dated 24.12.2024 and submitted that no GST was payable. The petitioner also filed submissions vide letter dated 26.2.2025 uploading the same on 26.2.2025 itself and also drew attention towards the decision of this Court in Special Civil Application No.11345 of 2023 bringing it to the notice of the authority that no GST is payable on transfer of rights and thus it was requested to drop the proceedings.

5.8 The petitioner thereafter was served with the order in Form GST DRC-07 under section 73 dated 28.2.2025 and confirmed the proposal as made in the show cause notice dated 26.11.2024. Hence, the present petition.

6. Learned advocate Mr.Dhaval Shah appearing for the petitioner has argued that despite the petitioner having pointed out the decision of this Court, the adjudicating authority has observed that since the Government has decided to challenge the decision rendered in Special Civil Application No.11345 of 2023, passed the impugned order.

6.1 Learned advocate for the petitioner has further submitted that as on date, since there is no stay granted by any competent court against the order passed in Special Civil Application No.11345 of 2023, the adjudicating authority ought to have dropped the proceedings.

7. Learned advocate Mr.Dipak Khemchandani appearing for respondent No.1 and Ld. AGP Ms.Shrunjal Shah appearing for respondent Nos.2 to 4 have supported the impugned order.

8. The issue involved in the present petition remains no more *res integra*. In the case of Gujarat Chamber of Commerce and Industries and others Vs Union of India, reported in 2025 (94) GSTL 113 (Guj), it is held that GST would not be leviable on the assignment of lease hold rights of plot or the land allotted on lease by the industrial concern and building constructed thereon by the lessee or its successor (assignor) to a third party (assignee) on

payment of lumpsum because such an assignment by sale and transfer of leasehold rights of plot for a consideration would be assignment/sale/transfer of benefits arising out of immovable property by lessee – assignor in favour of third party – assignee who would become lessee of GIDC in place of original allottee – lessee and such assignment would not be covered under scope of supply. The same view has been taken in the case of Kabir Instrument and Technology Vs Union of India (Special Civil Application No.13526/2024), reported in (2025) 27 Centax 41 (Guj). In the case of Alfa Tools Private Limited Vs Union of India and another (R/Special Civil Application No.12047 of 2024) vide judgment dated 6.3.2025, the same view has been taken.

9. As far as the finding of the respondent authority with regard to challenge of the order passed in Special Civil Application No.11345 of 2024 before the higher forum is concerned, it is required to be noted that there is no positive order of stay placed on record and considering the judgment of this Court in Special Civil Application No.11345 of 2024, this Court is bound to decide the same in accordance with law. Hence, the said contention of the respondent department that the order is passed because the aforesaid order would be challenged does not hold good.

10. In the present case also, if the copy of the assignment deed dated 24.2.2021 at Annexure E at pages 81 to 85 is perused, it would be evident that what has been transpired is merely leasehold rights which were originally in favour of the petitioner now being transferred to M/s Janani Incast and nothing more. In view of the aforesaid facts and circumstances of the present case, in our considered view the case of the petitioner is squarely covered by the decision of this court, in the case of Gujarat Chamber of Commerce and Industry (Supra).

11. Resultantly, the present petition succeeds and the same is allowed. The impugned order being ex-facie illegal and without jurisdiction is hereby quashed and set aside. Rule is made absolute to the said extent with no order as to cost.

(BHARGAV D. KARIA, J)

(P. M. RAVAL, J)

H.M. PATHAN