



JUDGEMENT

Transfer of Development Rights Would Be Considered as Service Under GST Law

In Case Of:	Prahitha Constructions Pvt Ltd
Issued By:	Telangana High Court
Order No:	WP(C) No. 5493 of 2020
Order Date:	09 th February 2024

OBSERVATIONS

- M/s. Prahitha Constructions Private Limited ("the Petitioner") specializes in conceptualizing, planning, and developing commercial real estate projects. The Petitioner entered a Joint Development Agreement ("JDA") with landowners for the initial phase of constructing towers and common facilities on the land.
- The Petitioner has filed a writ petition seeking to declare the transfer of development rights from landowners to the Petitioner via the JDA as a sale of land, thus exempting it from GST levy. Additionally, the Petitioner challenges the legality of Notification No. 4 of 2018-Central Tax (Rate) and its amendment by Notification No. 23 of 2019, which impose GST on the transfer of development rights under JDA.
- The Petitioner argues that the JDA essentially constitutes a sale of developed land and disputes the Revenue Department's authority to subject it to GST.

FINDINGS

- The Joint Development Agreement (JDA) consists of two parts: one involves the agreement between the landowner and the Petitioner, while the other entails the Petitioner providing construction services to the landowner and subsequently selling the constructed area to third-party buyers.
- Ownership does not automatically transfer to the Petitioner upon the execution of the JDA. The Petitioner obtains rights to the developed property only upon project completion and the issuance of a completion certificate. At this stage, the Petitioner gains the right to sell the allotted property area to recoup the investment made during the JDA execution.
- The services provided by the Petitioner before the JDA issuance fall under the purview of GST as construction services, as per Entry 5(b) of Schedule II of the Central Goods and Services Tax Act (CGST Act).
The services related to the transfer of development rights by the Petitioner cannot be categorized under Entry 5 of Schedule III of the CGST Act.
- The challenge against the Impugned Notification lacks merit leading to the dismissal of the writ petition

N J JAIN & ASSOCIATES

CHARTERED ACCOUNTANTS

WWW.NJJAIN.COM

info@niteshjain.co.in

079-4002-2628