



JUDGEMENT

Development Rights Under Agreement Not Taxable Under RCM As They Do Not Qualify as TDR Under Entry 5B

Issued By:	Bombay High Court
In Case Of:	M/S Shrinivasa Realcon Pvt Ltd.
Order No:	WP No. 7135 OF 2024
Order Date:	8 th April 2025

FACTS & OBSERVATIONS

- M/s Shrinivasa Realcon Pvt. Ltd. was appointed as a developer by the landowner to construct a multi-storey complex on an 8,000 sq. ft. land in Mouza Lendra.
- As per the development agreement dated January 7, 2022, consideration involved ₹7 crores and two apartments; the developer was to hand over certain constructed units to the landowner.
- The GST department issued two SCNs claiming GST liability under Entry 5B of Notification dated June 28, 2017, revised on March 29, 2019.
- The petitioner challenged the applicability of GST, contending that the transaction does not involve a supply of Transfer of Development Rights (TDR) or Floor Space Index (FSI) as defined under applicable regulations.

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- The Bombay High Court (Nagpur Bench) noted that the agreement involved construction for the landowner, not a transfer of development rights for independent commercial use by the developer.
- It held that the transaction did not fall within the scope of Entry 5B of the notifications dated June 28, 2017, or March 29, 2019.
- The Court observed that the rights granted to the developer through the development agreement, enabling them to construct buildings and transfer certain built-up units for consideration, do not equate to TDR as outlined in the notification.
- Accordingly, the SCNs and the proposed order were quashed and set aside; the Court held no GST was payable on the transaction.

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