



JUDGEMENT

Gujarat High Court Quashes Section 74 Notice; ITC on GIDC Lease Transfer Charges Not Blocked Under Section 17(5)(d)

Issued By:	Gujarat High Court
In Case Of:	Niket Bipinhai Patel
Order Date:	6th Feb 2026
Order No:	SCA No 18068 of 2025

FACTS & OBSERVATIONS

- The petitioner, a Non-Resident Indian engaged in acquiring leasehold rights over GIDC plots and subsequently transferring sub-plots, was issued a show cause notice under Section 74(1) of the CGST Act **alleging wrongful availment and utilisation of ITC** amounting to ₹98,11,678/- by invoking the restriction under Section 17(5)(d) (blocked credit relating to construction of immovable property).
- The ITC in question pertained to **GST charged by GIDC on sub-division fees, transfer charges, administrative charges, and other statutory levies paid by the petitioner while effecting transfer of leasehold rights**. The department alleged that such credit was in the nature of blocked credit.
- It was undisputed that the **petitioner's sole business activity was transfer of leasehold rights and that full output GST on sale of sub-plots had been discharged in cash**; an inadvertent utilisation of a portion of ITC was subsequently reversed through Form DRC-03.
- The department proceeded under Section 74 (fraud/suppression) and **blocked the credit ledger, alleging contravention of Section 17(5)(d)**, leading to the writ petition challenging both jurisdiction and interpretation of the blocked credit provision.

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- The High Court held that **Section 17(5)(d) applies only to goods or services used for construction of immovable property, and that the petitioner was not undertaking any construction activity but merely transferring leasehold rights**; hence, the blocked credit provision was wrongly invoked.
- The Court observed clear absence of logic, noting that the **statutory bar relates exclusively to construction-related expenditure** and could not be extended to statutory charges paid to GIDC for transfer of leasehold rights.
- It further held that **invocation of Section 74 was wholly unsustainable in the absence of any allegation or evidence of fraud, wilful misstatement, or suppression of facts**, particularly when output tax had been paid in cash and ITC utilisation had been reversed.
- Consequently, the **show cause notice was quashed, and the Court directed unblocking of ITC** amounting to ₹98,11,678/-, reiterating that jurisdictional preconditions under Sections 17(5)(d) and 74 must be strictly satisfied before initiating coercive proceedings.

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