

केन्द्रीय कर आयुक्त (अपील)		
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015.		
आम्बावाडी, अहमदाबाद-380015		
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- क फाइल संख्या : File No : V2(ST)0222/A-III/2016-17 / 19031 को 19042
- ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-119-17-18
दिनांक Date : 26-10-2017 जारी करने की तारीख Date of Issue 22-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

- ग Arising out of Order-in-Original No SD-02/23/AC/2016-17 Dated 30.11.2016
Issued by Assistant Commr STC, Service Tax, Ahmedabad

- ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Udhay-VJ Realty Pvt. Ltd
Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

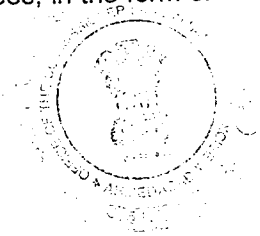
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s.Udhay-VJ Realty Private Limited, 3rd floor, Heritage Complex, Bodakdev, Ahmedabad (hereinafter referred to as the 'the appellants' for sake of brevity) against Order-in-Original No. SD-02/23/AC/2016-17 dated 30.11.2016 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the 'adjudicating authority' for the sake of brevity).

2. Briefly facts of the case are that the appellants are registered with the Service Tax Department under the category of "Renting of immovable property service [Section 65 (105) (zzzz)] and holding Registration No. AAACQ1087GST001.

3. During the course of Audit, on reconciliation of figures of taxable income as appearing in the Balance Sheet/P & L Account vis-à-vis taxable value declared in the Half Yearly ST-3 returns, it was noticed that they had discharged less Service Tax liability during the year 2013-14. It was explained by the appellant at the time of audit that the said income is from renting of movable properties viz. Furniture and other office equipment, at their Bangalore premises. The said appellant argued that they have paid VAT on rent of furniture hence they are not liable to pay Service Tax.

3. A SCN was issued to the said assessee regarding renting of movable properties viz. Furniture and other office equipment, should not be considered as taxable service and classified under the "supply of tangible goods service", as defined under Section 65(105)(zzzj) of the Finance Act, 1994 and amount shown as rent charges received by them amounting to ₹ 20,75,172/- should not be considered as taxable value for providing of "Service of supply of tangible goods service".

4. The adjudicating authority vide OIO No.SD-02/AC/23/2016-17 dated 30.11.2016 decided the matter and held that service provided by the said assessee as taxable Service under the supply of tangible goods service under Section 65(105)(zzzj) of the Finance Act, 1994, Confirmed the demand of Service Tax under Section 73(2) of the Finance Act, 1994 read with Section 68 and Ordered to recover interest under the provisions of Section 75 of the Finance Act, 1994, Imposed penalty upon the said assessee under Section 77(1)(a) of the Finance Act, 1994 for the failure to register themselves under the provision of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994. Imposed a penalty under Section 77 (2) of the Finance Act, 1994. Imposed an equal penalty of ₹ 2,56,491/- upon them under Section 78 of the Finance Act, 1994 for suppressing and not disclosing the value of taxable services before the Department and contravening the provisions of Section 68 of the Finance Act, 1994 with an intention to evade the payment of Service Tax.

5. Being aggrieved with the impugned order, the appellants preferred the present appeal. They stated that they have paid VAT/CST as the case may be, treating the transaction as deemed sale which is also amenable to VAT/CST as effective control and possession is transferred by the appellants to the customers. Renting of Furniture and other office equipments does not fall under the category of Supply of Tangible Goods service, as they have transferred the rights to use goods. The Furniture and other office equipment are transferred by them to customers for their use as per the agreement. Further, as per clause 16.1 of the Lease Agreement, the customers will also repair or replace any



damage in connection with the Furniture and other office equipment. The Furniture and other office equipment becomes the property of the Customers during the period of lease. They have cited various judgments in their support.

6. Personal hearing in the case was granted on 07.09.2017, Ms. Priyanka Kalwani Advocate, appeared on behalf of the appellants and reiterated the contents of the grounds of appeal. She pointed out GIMMCO 48 STR 476 (T,Mum) (para 5.2) to show that right to possession has been transferred. She submits additional submission on 07.09.2017.

7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing and additional submission.

8. I find that issue to be deliberate is whether the renting of movable properties viz. Furniture and other office equipment be considered as taxable service and classified under the "supply of tangible goods service", as defined under Section 65(105)(zzzj) of the Finance Act, 1994, and liable to service Tax. Whether leasing of furniture and fixtures and other office equipment can be deemed as sale, as per their agreement of lease. To determine the aspect of deemed sale it is to be examined that as per agreement there is "transfer of right to use such goods" or transfer of such goods for use".

9. In order to decide the issues, I would like to reproduce the relevant provisions of the Finance Act, 1994 and the Rules made there under in my attempt to holistically examine the issue and decide on such applicability of Service Tax.

9.1. Supply of tangible goods service has been introduced in the service tax net w.e.f. 16.5.2008 in Finance Act, 2008 a new taxable service vide Notification No. 18/2008-ST dated 10.5.2008.

Section 65(105)(zzzzj) of Finance Act, 1994 defines taxable service in relation to supply of tangible goods as under —

"Any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances"

9.2.1 CBEC, New Delhi vide letter D.O.F. No. 334/1/2008-TRU dated 29.02.2008 has clarified the scope of services taxable under Supply of Tangible Goods category in para 4.4, which is as under:

"4.4 Supply of Tangible Goods for use:

4.4.1 Transfer of the right to use any goods is leviable to sales tax/VAT as deemed sales of goods [Article 366(29D) (d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.

4.4.2 Excavators, wheel loaders, dump trucks, crawler carriers, compaction,

equipments, cranes etc. off shore construction vessels and barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. Transactions of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods. is

treated as service.

4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use with no legal right of possession or effective control. Supply of tangible goods for use and liable to VAT/sales tax as deemed sales of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid"

9.2.2 Therefore, if the transaction amounts to transfer of right to use the goods, it will be considered deemed sale under Article 366(29A) of the Constitution and sales tax will be payable. Otherwise, the transaction would be considered as permitting right to use the goods and service tax would be payable.

9.3.1 From 01.07.2012, the transfer of goods by ways of hiring , leasing, licensing or any such manner without transfer of right to use such good has been declared as deemed service. The extract of relevant portion of Section 66E is reproduced as under:-

"The phrase 'declared service' is defined in section 65B(44) of the Act as an activity carried out by a person for another for consideration and specified in Section 66E of the Finance Act,1994.

"Declared Services — The following shall constitute declared services, namely:-

- (a) ..
- (b)....
- (c)
- (d)
- (e)

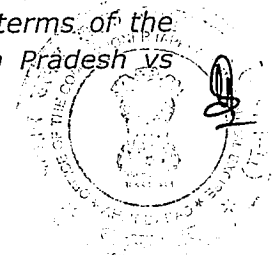
(f) *The transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods has been declared as deemed service.*

9.3.2 *From the above definition read with Section 66E, it is clear that transfer of goods by way of hiring, leasing, and licensing or any such manner without transfer of right to use such goods is included in service tax net.*

9.4.1 *Meaning and scope of the phrase 'transfer of right to use such goods' and example of transaction involved 'transfer of right to use goods have been given in para 6.6.1 & 6.6.2 of the taxation of Services : An Education guide issued by the CBEC as under.*

6,6 .1 *What is the meaning and scope of the phrase 'transfer of right to use such goods'*

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right of goods' involves transfer of possession and effective control over such goods in terms of the judgment of the Supreme Court in the case of State of Andhra Pradesh vs



Rashtriya Ispat Nigam Ltd [Judgment dated 6/2/2002 in Civil Appeal no. 31 of 1991]. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control.

The test laid down by the Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)] to determine whether a transaction involves transfer of right to use goods, which has been followed by the Supreme Court and various High Courts, is as follows:

- *There must be goods available for delivery;*
- *There must be a consensus ad idem as to the identity of the goods;*
- *The transferee should have legal right to use the goods — consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;*
- *For the period during which the transferee has such legal right, it has to be the exclusion to the transferor — this is the necessary concomitant of the plain language 91 of the statute, viz., a 'transfer of the right to use' and not merely a license to use the goods;*
- *Having transferred, the owner cannot again transfer the same right to others.*

Whether a transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole, to determine the nature of the transaction.

6.6.2 Whether the transactions listed in column I of the table below involve transfer of right to use goods?

S.No	Nature of	Whether transaction involves transfer of right to use
I	A car is given in hire by a person to a company along with a driver on payment of charges on per month/mileage basis	Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner (Delhi High Court Judgment in the case of International Travel House in Sales Tax Appeal no 10/2009 refers). The service is, therefore covered in the declared list entry.

9.4.2 In the above illustration, even if the possession and effective control of the car is with the driver, he is not having legal rights or possessions of the car. In the present case also, the possession of the equipments/ machines etc. and effective control of these equipments/ machines etc. have been transferred to the lessee by virtue of agreement, the legal right of possession has not been transferred.

9.5.1 Further, the Central Board of Excise and Customs vide Circular No. 198/08/2016- Service Tax dated August 17, 2016 has issued clarification on Service tax liability in case of hiring, leasing, licensing of goods without the transfer of right to use them, as provided under Section 66E(f) of Finance Act, 1994 as under.

"Subject: Service tax liability in case of hiring of goods without the transfer of the right to use goods.

"In terms of sub-clause (d) of clause (29 A) of Article 366 of the Constitution of India, the transfer of the right to use any goods for any purpose (whether

or not for a specified period) for cash, deferred payment or other valuable consideration is deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. It follows that such transactions will be liable for Sales Tax/Value Added Tax. In terms of section 66E(f) of the Finance Act, 1994, transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods is a "declared service" and hence liable to service tax. In this regard some representations have been received

2. The matter has been examined. I am directed to draw your attention to the fact that in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. Further, the Supreme Court in the case of *Bharat Sanchar Nigam Limited vs Union of India*, reported in 2006(2) STR 161 SC, had laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely,-

- a. *There must be goods available for delivery;*
- b. *There must be a consensus ad idem as to the identity of the goods;*
- c. *The transferee should have a legal right to use the goods -- consequently all legal consequences of such use, including any permission or licenses required therefore should be available to the transferee;*
- d. *For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute — viz. a "transfer of the right" to use and not merely a licence to use the goods;*
- e. *Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.*

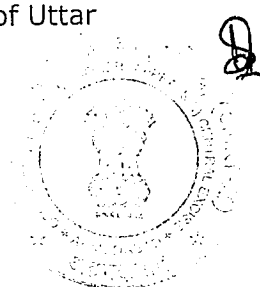
3.1 This criteria must invariably be followed and applied to cases involving hiring, leasing or licensing of goods. The terms of the contract must be studied carefully vis- a- vis the criteria laid down by the Supreme Court in order to determine whether service tax liability will arise in a given case. It is not possible to either give an exhaustive list of illustrations or judgments on this issue. Cases decided under the Sales Tax VAT legislations have to be considered against the background of those particular legislative provisions and terms of contract in that case.

3.2 The following case law may also be referred to. These should not be applied mechanically but their applicability to the facts of a given case, the terms of the contract in the given case and the criteria laid down by the Supreme Court should be examined carefully.

3.2.1 *Commissioner VAT vs International Travel House Ltd — Delhi High Court judgement dated 8-9-2009 in ST Appeal 10/2009.*

3.2.2 *Rashtriya Ispat Nigam Limited vs Commercial Tax Officer reported in 1990(77) STC 182 and State of Andhra Pradesh vs Rashtriya Ispat Nigam Limited reported in 2002 (126) STC 114.*

3.2.3 *State Bank of India vs State of Andhra Pradesh reported in 1988 (70) STC 215 A.P* 3.2.4 *Ahuja Goods Agency vs State of Uttar Pradesh reported in 1997 (106) STC 540.*



3.2.5 Lakshmi AV Inc vs Assistant Commercial Tax Officer reported in 2001(124) STC 426 Karnataka

3.2.6 G. S Lamba and Sons vs State of Andhra Pradesh reported in 2015(324) ELT 316 A.P"

9.5.2 In view of above circular, the Board clarified that in such cases it is essential to determine whether in terms of the contract, there is a transfer of the right to use the goods. Further, the criteria laid down in the case of Bharat Sanchar Nigam Limited vs. Union of India by Supreme Court must invariably be followed. Further, the Board also gives examples of financial lease & operating lease, as well as dry leases & wet leases for aircraft industry, to explain and emphasize the diverse nature of transactions and states that no a priori generalizations or assumptions about Service tax liability should be made and the terms of the contract should be examined carefully against the backdrop of the criteria laid down by the Supreme Court in the Bharat Sanchar Nigam Limited case as well as other judicial pronouncement.

9.6 It is found that rent is being charged as MOVABLE AREA and movable is fixed in rented premises. Hence the lessee has no full control on the movable area. The said assessee has rented the movable area with certain condition. In rent agreement, it is mentioned that the lessee cannot carry out any alteration in interior including furniture without consent of the said assessee. If the said assessee has paid the VAT, it is the fault on their part and hence they cannot escaped from payment of service tax.

9.7 I further find that in the present case, it is not in dispute that the said assessee has supplied tangible goods i.e. furniture, fixture and equipments to their lessee. I have gone through the copy of lease agreement and found that said agreement permit only the use of goods to the lessee and does not state anywhere about transfer of right to use the goods to the lessee.

9.8 The said lease agreement states that the Lessee shall always observe and perform all the terms and conditions, covenants and provisions on which the said premises are given on lease and shall not do, omit or suffer to be done anything whereby the **right of the lessor** to the said premises the furniture, fixture and equipment in the said premise provided by the lessor is violated or forfeited or jeopardized or enhanced or affects the warranties /guarantee pertaining to the equipment provided in the said premises.

9.9 The essential conditions for taxability under the category "Supply of tangible goods for use services are (i) there is no transfer of right of possession and (ii) effective control of the equipments; which are not only stands fulfilled but also evidenced documentarily, as mentioned in the above paras.

9.10 Mere payment of VAT by the assessee by own volition does not mean that the liability of service tax is ruled out. Further, 'right to possess' is quite different and has different meaning from the word 'possession'. The agreement/s entered into by the assessee suggests that the assessee has given the right of use and the possession to the lessee. However, the legal rights of possession of the equipments / machines etc. have not been transferred to the lessee. Further, lease agreement clearly stipulates as under

9.11 "LESSEE shall not make any alterations, additions or improvements to the plant without prior written consent of the LESSOR." Any such addition etc. of whatever nature, if and when made to the plant shall be deemed to be an

integral part of the plant owned by and belonging to the LESSOR and shall be subjected to the terms and conditions of this agreement "which clearly mean that the effective control of the equipments / machines etc. has been retained at the end of the lessor and the same has not been transferred to the lessee.

10. In view of above discussed facts it can be concluded that the present transaction is for permitting use of the goods only and not transfer of right to use the goods thus the services provided by the said assessee are covered within the definition of "Supply of tangible goods Service" as defined under Section 65(105)(zzzj) of Chapter V of the Finance Act, 1994 and w.e.f. 01-07-2012 declared service under Section 66E of the Act. Therefore, service tax on the said income was required to be charged and recovered from the said assessee under Section 73 (1) of Finance Act, 1994 and various pleas and case laws quoted by the assessee in support of their defense are not applicable in this case. Thus, the said..assessee has failed to discharge the service tax liability of ₹ 2,56,491/- worked out on taxable value of ₹ 20,75,172/-. It was further observed that the said assessee had neither included "Supply of tangible goods Service" in their service tax registration nor paid the Service Tax and also not reflected the same in their ST-3 Returns. Thus, they have contravened the provisions of Section 65, 66, 68, 69 and 70 of the Finance Act, 1994 read with Rule 4, 6 & 7 of Service Tax Rules, 1994.

11. In view of above discussions, I reject the appeal filed by the appellant and up-hold the Order-In-Original.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 26/10/2017

ATTESTED

K.H. Singhal
(K.H. Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.
BY R.P.A.D.

To,

M/s. Udhay-VJ Realty Private Limited,
3rd floor, Heritage Complex, Bodakdev,
Ahmedabad-380054.

Copy To:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South,, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, Central Tax GST South, Div-VII, Ahmedabad (New jurisdiction).
- 5) The Asst. Commissioner (System), GST South, Hq, Ahmedabad.
- 6) Guard File.



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