केंद्रीय कर आयुक्त (अपील)

सत्यमेव जयते

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

11427-11446

क फाइल संख्या : File No : V2(ST)/65/A-II/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-314-2017-18**
दिनाँक Date : **02-02-2018** जारी करने की तारीख Date of Issue 20/2/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **SD-04/27/AC/2016-17** दिनाँक: **21/03/2017** issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appe lant / Respondent

GMMCO Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे वताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

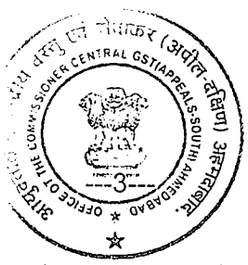
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लेखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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 appeal has been filed by M/s. GMMCO Limited, 704, Sakar-IV, Opp.Town Hall, Ellis Bridge, Ashram Road, Ahmedabad-6 (hereinafter referred to as 'the appellant) against the Order-in-Original STC/4-69/O&A/ADC/D-II/15-16 dated 21.03.2017 dated 23.01.2017 ('the impugned order') passed by the Assistant Commissioner, Service Tax, Division-IV, Ahmedabad ('the adjudicating authority').

2. The facts in brief are that the appellant is engaged in renting out of Heavy Earth Moving Machinery under a contract/ agreement. As it appeared that the activities rendered by the appellant got covered under the "Supply of Tangible Goods" Service as defined under Section 65(105)(zzzzj) of the Finance Act, 1994, a case was booked against the appellant by the Preventive Wing of Service Tax, Ahmedabad. Show Cause Notice was issued to the appellant for non-payment of service tax, non-registration under the service category of "Supply of Tangible Goods" for the period from 2009-10 to 2013-14, which was confirmed/ upheld by the Commissioner of Service Tax, Ahmedabad. The present case involves/pertains to the period of 2014-15. As it appeared that the appellant had continued to follow the said activities by not registering and non-payment of service under the service category of "Supply of Tangible Goods "Service, a demand notice dated 28.03.2016 for non- payment of Rs.27,52,707/- with interest leviable and imposition of penalty was issued. The said impugned notice was adjudicated vide the impugned order, by confirming the short paid amount with interest and imposition of penalty under Sections 76, and 77 of the Finance Act, 1994 (FA).

3. Being aggrieved, the appellant has filed the present appeal on the grounds that as per agreement, the as per Section 65(105)(zzzzj) of FA, service tax under the head of supply of tangible goods is not payable when supply of tangible goods like earth moving machinery are made by transferring right of possession and effective control of such machinery, equipment and appliances; that renting of earth moving equipment like excavators is not liable to service tax as they are transferring the right to use and possession to their clients; that CBEC circular dated 29.02.2008 substantiate that if VAT/Sale Tax is paid or payable, service tax would not apply; that as per article 366 (29A)(d) of Constitution of India, renting of such equipment is deemed sale and hence VAT is payable and not service tax; that as per various clause of agreement, it is clear that legal right of possession and effective control of the equipment has been transferred to the hirer that the Hon'ble Tribunal Mumbai in appellant's own case (2017-TIOL-485-CESTAT-Mum) in similar facts pertaining to demand for earlier period has held that their activities of giving various equipment on hire does not fall under the category of Supply of Tangible goods and also based on Andhra Pradesh High Court decision in G.S.Lamba 92012-TIOL-49-HC-AP-CT) and Tribunal judgment in Petronet LNG Ltd (2013-TIOL-1700-CESTAT-Del). No penalty is imposable as the issue involves legal interpretation;

4. Personal hearing in the matter was held on 31.01.2018. Shri Palash Dharmadhikari, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He further submitted additional submissions and copy of Court/Tribunal's decisions in their favour.

5. I have carefully gone through the case records and submission made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is as to whether the service rendered by the appellant is classifiable under the service "Supply of Tangible Goods" as per provisions of Section 65 (105) (zzzzj) of the Finance Act, 1994, or otherwise.

6. Section 65 (105) (zzzzj) of the Finance Act, 1994 defines "Supply of Tangible Goods Services", as follows:

> *"Taxable service means" 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."*

7. I observe that the entry No.(zzzzj) of Section 65 (105) of the Act *ibid* referred above is a new entry inserted vide Finance Act 2008 with effect from 16.05.2008. To fall within the definition of taxable service of "Supply of Tangible Goods" referred above, mainly two conditions are required to be satisfied - (i) there should be a supply of tangible goods for use; (ii) there should not be any transfer of right of possession and effective control of such goods. Once these two conditions are satisfied, the provisions of the said entry will be attracted.

8. In the instant case, I observe that the appellant used to supply of Heavy Earth Moving Machinery to their customers under a contract/ agreement, on the basis of monthly fixed charges under a contract/agreement. Relevant excerpts from the contract signed between the appellant and various customers are reproduced below for ease of reference:

[i] *GMMCO will provide two skilled operator and helper for operation of equipment at the site and the hirer shall not make any payment to the operator without written consent.*

[ii] Routine maintenance and repairs of the equipment will be carried out by GMMCO and hirer shall not issue any spare parts/lubricant/consumable without consent of GMMCO.

[iii] The hirer confirms and agrees that the equipment is offered by GMMCO only on "right to use" basis and acknowledges the title and ownership of GMMCO of the equipment and he shall not at any time claim any proprietary rights, title or interest the equipment.

9. From the terms of the agreement entered into between the appellant and their customers, it is clear that the service provided by the appellant is essentially supply of equipment along with its personnel, to operate the same on charter hire basis for use by their customers and the payment for the services rendered is made on monthly basis to the appellant. In the present case, the appellant has supplied equipment along with its skilled personals and helpers. In the circumstances, it is the appellant, who has possession and effective control over the equipment, by virtue of appellant supplying the skilled personals and helpers with such equipments. The personal/ helpers supplied are the employees of the appellant and not of their customers. Further, the contract clearly shows that there is no transfer of right of possession by the appellant to the customers. The above contract also indicates the fact that the appellant is technically bound by the customers, in terms of the compatibilities of equipment and the competence of the manpower engaged with such equipment, inasmuch as the appellant should provide specified number of equipments with competent/skilled personal/helpers with required equipments viz., spare, lubricant and consumable etc. In respect of manpower associated with the equipment in question supplied by the appellant, it is presumed that the salaries/wages are to be paid by the appellant, they being the employer. Looking into the circumstances of this case, I observe that the owner of the equipment is the appellant, who supplied the said equipment to their customers for use in their premises and raised bills on monthly basis for hired equipments, owned by them. Although the appellant has assigned "right to use" the machinery to their customers, they have not transferred the "right of possession and effective control" of such equipment to their clients.

10. Further, the appellant has argued that renting of earth moving equipment like excavators is not liable to service tax as they are transferring the right to use and possession to their clients; that CBEC circular dated 29.02.2008 substantiate that if VAT/Sale Tax is paid or payable, service tax would not apply and as per article 366 (29A)(d) of Constitution of India, renting of such equipment is deemed sale and hence VAT is payable and not service tax. The said CBEC circular clarifies that:

> *"4.4.1 Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods [Article 366(29A)(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 equipment, cranes, etc., offshore construction vessels & 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. Transaction 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*

leviable to VAT / sales tax as deemed sale 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."

11. In the instant case, I observe that there is no reason or inputs on records even to presume that the said equipment supplied by the appellant to their customers has actually transferred the right of possession or effective control to use the equipments to their clients. On the contrary, the agreements between the appellant and their customers clearly reveals that the appellant is technically bound by the customers, in terms of the compatibilities of equipment and the competence of the manpower engaged with such equipment, inasmuch as the appellant should provide specified number of equipments with competent/skilled personal/helpers with required equipments viz., spare, lubricant and consumable etc.

12 Further, provisions about the classification of services are provided under Section 65A of the Finance Act. The said section is as under:-

65A. Classification of taxable services. -

(1) For the purposes of this chapter, classification of taxable services shall be determined according to the terms of the sub-clauses (105) of Section 65;

(2) When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of Section 65, classification shall be effected as follows :-

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) Composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration;

13. In the circumstances, I observe that all the ingredients of the taxable service of "supply of tangible goods" as defined under Section 65(105)(zzzzj) of the Act and "service" as covered the Section *supra* are fully satisfied. Further, on going through the various services before the introduction of negative list concept (which has done away with positive list), it would be seen that there is no pattern or mutual exclusivity in the scope of various services. In Customs and Central Excise Tariff the classification of the goods is based on highly scientific pattern. In case of Service Tax, however, various services were brought into the tax net from 1994 onwards on *ad hoc* basis. There is no pattern in the order the services were brought under the tax net. Descriptions of the services are not mutually exclusive. Some of the services are very specific and precise while some are wide in scope. This is the reason that recourse needs to be taken to Section 65A for classifying

particular services at a particular point of time. As per Section 65A of the Finance Act, if a service is classifiable under two or more sub-clauses of clause (105) of Section 65, *Classification shall be effected to the sub-clause which provides the most specific description to sub-clauses providing a more general description.* From the above definitions, I find that the activity under consideration is specifically covered under the category "Supply of tangible goods service".

14. I observe that the Hon'ble Tribunal, Mumbai in the case of M/s Greatship (I) Ltd reported at 2015 (37) STR 533 (Tri-Mumbai) decided a similar issue. In the said judgment, the Hon'ble Tribunal held that the activity of supply of drilling rig along with its personnel to operate the same on charter hire basis without transferring possession and active control comes within the ambit of "supply of tangible goods". The relevant excerpts are reproduced below for ease of reference:

> *"**3** Thus, from the terms of the agreement entered into between the appellant and M/s. ONGC, it is clear that the service provided by the appellant is essentially supply of drilling rig along with its personnel to operate the same on charter hire basis and the payment for the services rendered is made on per-day basis. Thus, from the terms of the contract, it is clear that the activity comes within the scope of 'supply of tangible goods for use'. In the present case, the appellant has supplied drilling rigs along with the crew. **Thus it is the appellant who has possession and effective control over the drilling rig**. The crew so supplied are the employees of the appellant and not of ONGC. **Consideration is paid on per-day basis.** All these elements in the contract clearly show that **there is no transfer of right of possession and effective control by the appellant** to M/s. ONGC." (emphasis supplied)*

15. In the said judgement, the Hon'ble Tribunal also relied on the case of The Shipping Corporation of India and M/s Srinivas Transports in para 5.14, which reads as under:

> *"**5.14** A similar issue arose for consideration in the case of The Shipping Corporation of India [2013-TIOL-1652-CESTAT-MUM = 2014 (33) S.T.R. 552 (Tri. Mumbai)], In the said case, the appellant therein provided vessels to ONGC on charter hire basis for transportation of crude oil from Bombay High to the refinery onshore. This tribunal held that the service provided would merit classification under SOTG service. In a recent decision in the case of Srinivasa Transports [2014 (34) S.T.R. 765 (Tri.-Bang.)], a question arose as to whether supply of tractor trailers along with trained drivers to undertake transportation of containers within a container terminal would merit classification under SOTG service or as business support service. This tribunal held that the said service merits classification under SOTG service. These decisions also support the view that charter hire of drilling rigs on time charter basis will fall under SOTG service".*

The ratio of the above mentioned decisions is squarely applicable to the facts of the present case. The appellant has relied on Hon'ble Tribunal Delhi's decision in case of M/s Petronet LNG [2016 (46) STR 513]. I observe that the said decision was distinguished by the Principal Bench of Hon'ble Tribunal New Delhi in case of M/s Carzonrent (India) Pvt Ltd [2017 (50) S.T.R. 172 (Tri. - Del.)]. It has been held that:

Similarly, the Tribunal in Patronet LNG Ltd. - 2013-TIOL-1700 = 2016 (46) S.T.R. 513 (Tri.-Del.) was dealing with chartering of tankers for transportation of LNG. The conditions of agreement are apparently different in the said case. Similarly, the Hon'ble Delhi High Court in Delhi Airport Advertising Pvt. Ltd. - 2016 (44) S.T.R. 399 (Del.) was dealing with revenue earned from display of advertisements. The Hon'ble High Court held that the service tax and VAT were mutually exclusive and the dominant object of transaction would determine the nature of transaction. We find that applying the said ratio and referring to the terms of the agreement, in the present case, the dominant object of the transaction is one of the renting /hire motor vehicles and not transfer of control or possession or "deemed sale of such vehicle". We note that the similar such decisions relied upon by the appellant were all dealing with specific set of facts in terms of the agreement relevant to the respective cases. We note that the principle laid down by the Hon'ble Supreme Court in BSNL (supra) will guide while determining the actual nature of transaction between the parties. We are satisfied that the impugned order examined the issue in correct perspective to arrive at the conclusion that the appellant are liable to service tax in respect of the services rendered by them under the category of "rent-a-cab services".

16. In the instant case also, the agreements between the appellant and their customers clearly reveals that the appellant is dealing with specific set of facts in terms the said agreement and main object of supply is one of renting/hire the equipment and not transfer of control or possession or deemed sale of such equipment. In view of the above discussion, the appellant is liable for payment of service tax for the disputed period under the category of taxable service of "Supply of Tangible Goods" as specified under Section 65(105)(zzzzj) of the Finance Act, 1994 in respect of services rendered to ONGC. As duty was not discharged within stipulated time, interest is payable under section 75 of the Finance Act, 1994.

17. I find that the adjudicating authority has imposed penalty under Section 76 and 77 of the Finance Act, 1994. The penalties imposed under the said Sections appear to be apt in the light of the circumstances of the case.

18. In this backdrop, I reject the appeal filed by the appellant and uphold the impugned order passed by the adjudicating authority. The appeal stands disposed of accordingly.

(उमा शंकर)
आयुक्त (अपील्स)
~~08.12.2017~~
02/02/2018

Attested

(Mohanan V.V)
Superintendent (Appeals)
CGST, Ahmedabad

R.P.A.D

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3. The Addl./Joint Commissioner, (Systems), CGST South
4. The Dy. / Asstt. Commissioner, Division-VI, South,
5. Guard file.
6. P.A.