IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75313 of 2017

(Arising out of Order-in-Original No.74/Commr./ST-II/Kol/2016-17 dated 19.10.2017 passed by Commissioner of CGST & Central Excise, Kolkata)

M/s TIL Ltd.
(1, Taratolla Road, Kolkata-700024)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Ms.Payel Bharwani, Advocate for the Appellant
Mr.P.Das, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75713/2026

DATE OF HEARING : 21 MAY 2026

DATE OF PRONOUNCEMENT : 17 JUNE 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.2,10,17,326/- has been confirmed against the appellant and an equal amount of penalty has also been imposed on the appellant under Section 78 of the Finance Act, 1994.

2. The facts of the case are that the appellant is primarily engaged in the business of manufacturing and trading of various equipments such earthmoving equipment. The Appellant obtained registration under Service Tax law, various State Value Added Tax Acts, and also Central Sales Tax Act.

2.1 In addition to the manufacturing and trading of equipment, the Appellant also enters into agreements with various customers for renting of such equipment for specific period on rental basis. As per such agreements, the Appellant deploys the equipments at the customers' site, for specified period, during which the responsibility of the equipment entirely and exclusively rests with the customer. In short, the customers take possession and control of the equipment, whereas the ownership remains with the Appellant.

2.2 Few of the important terms of the agreement entered into by the Appellant with BSC-C&C JV are summarized below –

- An operator for operating the equipment may either be deputed by the customer itself or by the Appellant, at the request of the customer. However, in both the scenarios, the responsibility for any claim arising in connection with the operation of the equipments vests with the customer. (Clause 4)
- The equipment delivered on rent by the Appellant, shall be at the sole risk of the Customer. (Clause 7.1)
- The equipment shall be under the possession, control and custody of the Customer during the tenure of the agreement (Clause 2.2).
- The equipment will be returned to the Appellant on expiry of the contract period. (Clause 9.4)
- The customer shall indemnify the Appellant against any losses, damages, or destruction to the equipment or any component thereof. (Clause 8.1)

- The Appellant upon delivery of the equipment at the site of the customer, shall not use the equipment for any other purpose or withdraw the same. (Clause 2.7)

Since, there was a transfer of right to use the goods, i.e., transfer of effective control and right of possession of the goods to the customers, the Appellant issued invoices charging applicable VAT treating the same as "deemed sales".

2.3 However, in respect of such transactions, proceedings were initiated for the underlying period by issuance of the show-cause notice wherein the Department alleged that the Appellant is liable to pay service tax under the category of "supply of tangible goods service" under Section 65(105)(zzzzj) of the Finance Act, 1994 ('**Finance Act**') on the transaction of renting of equipments on hire to various customers for specified period of time, as per the agreement.

2.4 The Appellant filed a detailed reply to the show-cause notice praying to drop the demand of service tax since the transactions were in the nature of "deemed sales" for which the Appellant duly paid the applicable VAT/CST. Such reply was duly supported by a Certificate from an independent Chartered Accountant, certifying that the Appellant had duly paid the applicable VAT/ CST on the underlying transaction.

2.5 However, without considering such reply, the Ld.Commissioner, Service Tax-II, Kolkata confirmed the demand of service tax on the following grounds basis which the transaction does not qualify as "deemed sales" *:*

(i) The right of possession and effective control of equipment rented out is retained by the Appellant and the customers were making use of the equipment under the effective control of the Appellant.

(ii) The legal consequences arising as a result of operation of the equipment were on the part of the Appellant inasmuch as in case of accident/ injury/ death of the operator during operation, the Appellant would be responsible. Thus, the transaction would not qualify as 'deemed sale'.

(iii) The fact that the books of accounts are maintained as per AS-19 is not conclusive to determine the nature of the underlying transaction.

(iv) Penalty cannot be waived under Section 80 since there is no reasonable cause for non-payment of service tax.

2.6 Against the said order, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant submits that the issue regarding the underlying transaction being a deemed sales is no longer res-integra and the said issue is decided in favour of the appellant-assessee. She also submits that Section 65(105)(zzzzj) of the Finance Act,1994, defines the taxable service of 'supply of tangible goods' as follows:

> *"Section 65. Definition –*
> *….*
> *(105) "Taxable service" means any service provided or to be provided –*
> *…..*
> *"(zzzzj) 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*;"

Therefore, an activity would qualify as a service of supply of tangible goods, where the right of possession and effective control of the underlying goods is not transferred.

3.1 However, in the instant case, the appellant transferred the effective control, possession and custody of the goods, which is apparent from the following relevant terms of the agreement with the customer:

> *"2.2: … The equipment shall be under the control, custody and possession of the Customer during the tenure of the Agreement for use by them for the purpose for which the equipment is manufactured.*
>
> *2.3. … Besides the above, the Customer shall be liable to pay Sales Tax/ VAT/ CST and any other statutory levies, as applicable.*
>
> *2.7. … TIL upon the delivery of the equipment at the worksite of the Customer shall not use the same for any other purpose or withdraw the same till the termination of the Agreement except in the event of a default.*
>
> *3.3. … The equipment so deployed shall be under the overall supervision of the Customer.*
>
> *4.4. … The Customer may also operate the equipment through own skilled and trained operators subject to prior concurrence from TIL in writing. In that event, the Customer will be responsible for any damages/ accidents arising from mishandling or misuse of the equipment."*

The issue that such a transfer of right to use the equipment to the customer is a deemed sale and would attract VAT/ CST, and not service tax, is no longer res integra. She further submits that this Tribunal in the case of Gainwell Commosales v. Commr. of ST, Kolkata, 2025 (8) TMI 931 – CESTAT Kolkata, has held that supply of equipment to the customers for use attracts VAT and not service tax in accordance with the clear terms of the agreement entered into between the Appellant

and the customers. To support of her contention, she relies on the following decisions :

(a) Oil India Ltd. v. CC & CE (Appeals), Guwahati, 2024 (9) TMI 1793 – CESTAT Kolkata,

(b) Oil India Ltd. v. CCE & CGST, Guwahati, 2025 (4) TMI 957 - CESTAT Kolkata,

(c) Computer Exchange Pvt. Ltd. v. Commr. of ST – II, Kolkata – 2024 (6) TMI 501 - CESTAT Kolkata affirmed in ***2025 (7) TMI 79 - Calcutta High Court***

(d) Inox Air Products Pvt. Ltd. v. CCE & CGST, Noida, 2025-VIL-535-CESTAT-ALH-ST

(e) Lindstorm Services India Pvt. Ltd. v. CCE & ST-Vadodara-I (Vice-Versa), 2023 (1) TMI 1458 - CESTAT Ahmedabad

(f) Caravel Logistics Pvt. Ltd. v. CCE &GST, Chennai, 2024 (7) TMI 1582 - CESTAT Chennai

(g) Express Engineers & Spares Pvt. Ltd. v. Commr. CGST, Ghaziabad, 2022 (64) GSTL 112 (Tri. - All.)

(h) Gimmco Ltd. v. CCE & S.T. Nagpur (vice-versa), 2017 (48) STR 476 (Tri. - Mumbai)

Transfer of right to use:

3.2 She submits that vide the 46th amendment, Article 366(29A) of the Constitution of India, the ambit of the term "tax on the sale or purchase of goods" was widened to include in sub-clause (d) "*a tax on 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*".

3.3 Accordingly, various State VAT Acts were amended to enhance their ambit. Section 2(39) of the WBVAT Act, 2003 defined the term 'sale' as follows:

> *"(39) "sale" means any transfer of property in goods for cash, deferred payment or other valuable consideration, and includes, -*
>
> *……*

*(c) any 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,**;***
…."

3.4 Even Section 2(g) (iv) of the Central Sales Tax, 1956 contained*pari materia*provision to Section 2(39) of WBVAT Act, 2003. Therefore, whenever there is a transfer of right to use any goods, the same would be subject to levy of VAT/CST under.

3.5 In this regard, the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited (BSNL) v. Union of India – 2006 (2) S.T.R. 161 (S.C.) defined five attributes necessary to constitute to a 'transfer of right to use goods'. Such attributes, and their fulfillment by the Appellant are discussed below:

S. N.	**Attributes laid down by the Apex Court**	**Fulfillment of the attributes in the instant case**
1.	There must be goods available for delivery	The equipment are available for delivery and duly delivered to the customers' premiseas per the preamble of the agreement and Delivery Challans
2.	There must be a consensus ad idem as to the identity of the goods	The exact equipment is identified by the Appellant and Customer, as is evident from Schedule A of the agreement.
3.	The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the	As per Clause 3.4 of the agreement, the Customer (being the transferee) possesses the required permissions and licenses to use the equipment. The Appellant duly transfers all rights of usage in the equipment(s) to Customers. Hence, such equipment are used at the discretion of the Customers. The Customers are also provided with option to appoint their own operators to operate the equipment.

	transferee	
4.	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 of the statute - viz. a "transfer of the right to use" and not merely a licence to use the goods	As per clauses 2.2and 4 of the agreement, theentire control and custody of the equipment vests with the Customer, and the equipment is operated under the supervision and control of the Customer, to the exclusion of the Appellant (transferor). Further, as per Clause 2.7 of the Agreement, the Appellant cannot use the equipment for any purpose or withdrawthe same till the agreement terminates.
5.	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 rights to others.	In the instant case, once the equipment is delivered to the customer, there is no question of the same being used by any other party.

Therefore, the instant transaction qualifies as a 'transfer of right to use the goods' i.e., a deemed sale, falling within the ambit of 'sale' chargeable to VAT/CST. Since the possession and effective control of the equipment are transferred to the Customers, the transaction would fall outside the ambit of service tax.

3.6 She further submits that the service tax and VAT are mutually exclusive. She submits that in the instant case, the demand of service tax is not sustainable since VAT has been duly paid by the appellant. Based on the aforementioned submissions, she submits,since the underlying

transaction is a deemed sales, the Appellant has rightly deposited VAT or CST thereon. This is evident from the invoices issued by the Appellant as well as the CA Certificate. She submits that it is a settled law that VAT and service tax are mutually exclusive. In support of her contention, he relies on the following decisions :

(a) *Imagic Creative Pvt. Ltd. v. Commr. of Central Taxes – 2008 (9) S.T.R. 337 (S.C.)*

(b) *Oil India Ltd. v. CC & CE (Appeals), Guwahati, 2024 (9) TMI 1793 – CESTAT Kolkata*

(c) *Oil India Ltd. v. CCE & CGST, Guwahati, 2025 (4) TMI 957 - CESTAT Kolkata*,

(d) *Tractors India Private Limited v. Commr. of ST, Kolkata, 2026 (2) TMI 670 - CESTAT Kolkata*.

Even Circular No. 334/1/2008-TRU dated 29.02.2008 clarified at Para 4.4.3as follows:

> "...*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*."

She submits that as per the settled law, Circulars are binding on the department. Reliance is placed on the decision in UOI v. Arviva Industries (I) Ltd 2008 (10) STR 534 (SC). Accordingly, VAT and Service Tax are mutually exclusive, and when it is an undisputed fact that VAT has been paid, the same cannot be subject to service tax again.

3.7 She further submits that without prejudice to the above, the demand of service tax from July 2012 to March 2013, has been

confirmed under Section 65 (105)(zzzzj) of the Finance Act as "supply of tangible goods service". Here, it is humbly submitted that with effect from 01.07.2012, such a provision was no longer existing on account of advent of the negative list. As per the settled law, demand based on non-applicable provisions is unsustainable. Reliance is placed on the decision of this Tribunal in case of Commr. of CGST, Delhi East v. Sanjay Electricals (vice-versa), 2024-VIL-1865-CESTAT-DEL-ST wherein for the demand of Service Tax confirmed for the period post the repeal of provisions of Section 65(105) of the Finance Act was held to be non-sustainable due to the non-existing legal provisions. Thus, the demand for the period from July 2012 to March 2013 is liable to be set aside on this ground alone.

3.8 She further submitted that in the instant case, the proceedings were initiated for the period from April 2008 to March 2013 by way of issuance of show cause notice on 24.10.2013. Thus, the demand from 01.04.2008 to 30.09.2011 was in relation to the extended period of limitation, whereas the demand from 01.10.2011 to 31.03.2013 was within the normal period of limitation. Therefore, the Appellant was under the bonafide belief that no service tax is payable since the instant transaction constitutes a deemed sales on which VAT already stands paid. Hence, extended period of limitation could not have been invoked. In support of her contention, she relies on the following decisions :

(a) Amit Metaliks Limited v. CCE, Bolpur – 2023-VIL-1683-CESTAT-KOL-CE

(b) Carzonrent (India) Pvt. Ltd. v. Commr. of ST, Delhi – I – 2017 (50) S.T.R. 172 (Tri. – Del.)

(c) Sant Roadlines v. CCE& ST, Panchkula, 2020 (43) G.S.T.L. 206 (Tri. – Chan.)

Thus, the extended period of limitation has been wrongly invoked and the demand from 01.04.2008 to 30.09.2011 is liable to be set aside.

3.9 Finally, she prays for setting aside the impugned order by allowing their appeal with consequential benefits.

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order by relying the decision of the Hon'ble Supreme Court in the case of K.P.Mozika Vs. Oil and Natural Gas Corporation Ltd. reported in 2024 (388) ELT 11 (SC).

5. Heard both the parties and considered the submissions.

6. We find that in the case of K.P.Mozika cited by Ld.A.R. for the Revenue, the said decision pertains to the liability to pay Sales Tax/VAT by the appellant for the activity to provide different categories of motor vehicles, such as, trucks, trailers, tankers, buses, scrapping winch chassis and cranes to ONGC and there are other cases where IOCL has entered into agreements with transporters to provide tank trucks to deliver its petroleum products. In that case, the issue arises that whether by hiring these motor vehicles and cranes, there is a transfer of the right to use any goods. If there is a transfer of the right to use the goods, it will amount to a sale in terms of Clause 29A(d) of Article 366 of the Constitution of India. In the said decision, the Hon'ble Supreme Court has observed as under :

> ***"37.****Now, we come to Civil Appeal No. 4657 of 2013 and Civil Appeal No. 3580 of 2017. In this case, the contract is of 20th November, 2008 by and between the ONGC and M/s. Ali Brothers. The contract is for hiring a 20-metre-ton*

trailer. The salient features of the said contract are as under :

(a) Even in this contract, the entire manpower was to be provided by the contractor;

(b) The contractor was required to indemnify ONGC from all the actions, proceedings, claims, demands, and liabilities arising out of or in the course of or caused by the execution of work under the contract;

(c) The driver must be appointed by the employer having a valid professional driving license with three years of experience;

(d) The contractor must register himself under the Contract Labour (Regulation and Abolition) Act, 1970;

(e) The trailer shall be available for 26 days in a calendar month. The normal working hours will be 12 hours;

(f) The contractor shall make his own arrangements for parking all the trailers after duty hours;

(g) The contractor shall be responsible for the loss of the material provided by ONGC during transportation. In case of any accident or damage while the trailer is on ONGC duty, there shall be no liability of any nature incurred by the ONGC;

(h) The contractor must take insurance of trailers covering all the risks and liabilities, which will cover unlimited third-party claims and the claims under the Workmen's Compensation Act, 1923, made by the workmen.

38.*Looking at these clauses, it is obvious that the contractor fully controls the trailers during the contract period, and therefore, again, this is a case of a license granted to ONGC to use the trailer, and the right to use the trailer is not transferred to ONGC. Hence, test (c) out of the five tests is not fulfilled in this case."*

Admittedly, in that case, the right to use was not transferred to ONGC and the contractor fully controls the trailers during the contract period, which is not in the facts and circumstances of the case in hand. Therefore, the said decision is not applicable to the facts and circumstances of this case.

7. We find that the issue involved in this case is examined by this Tribunal in the case of M/s Gainwell Commosales Vs. Commissioner of Service Tax, Kolkata reported in 2025 (8) TMI 931-CESTAT, Kolkata, wherein this Tribunal has observed as under :

> *"16. Therefore, to sum up, a transaction would fall within the ambit of VAT/CST Act if there is a 'transfer of right to use' and in order to satisfy the same, there should be – (1) transfer of right of possession; and (2) transfer of effective control.*
>
> *17. In order to examine if the agreement by the Appellant with the customers falls within the ambit of 'transfer of right to use', it is pertinent to discuss the relevant clauses of the agreement.*
>
> *A. It is humbly submitted that the goods were very much available for delivery and delivered as evident from the preamble of the agreement and the Income-cum-Delivery Challans. Therefore, this qualifies the first attribute of the BSNL decision of "There must be goods available for delivery".*
>
> *B. Further, as regards the second attribute of BSNL decision that "there must be consensus ad idem as to the identity of goods" a part of page 93 of the Appeal Paper Book in ST/76877/2016 and is extracted below –*

Equipment & Attachment Description	*Quantity (Units)*	*Rental Rate Type*	*Maximum Permissible Operating Hour Cap Per Unit (Hours)*	*Minimum Base Rental Charges Per Unit (Rs.)*	*Extra day Per Unit (Rs.)*
CAT 42B	*1*	*Monthly*	*250*	*Rs. 95,000 + 4% VAT*	*Prorata*

C. *Further, as regards the third attribute of the BSNL decision which states that transferee should have a legal right to use the goods with all the permissions and licenses being made available to the transferee, it is submitted that such attribute does not apply to the present case since the Customers do not require any legal permission or license for its use. Further, as per the agreement, the Appellant has transferred all the rights in the said equipments to the customers, and the same are used at the discretion of the customers. The customers are also provided with option to appoint their own operators for operating the equipment. The relevant clauses of the agreement are extracted below –*

"2. Rental

2.2 ….Although ownership would best with TIPL, TIPL shall part with the possession, control and custody of the equipment. The equipment shall be under the possession, control and custody of the CUSTOMER during the tenure of the Agreement for use by them for the purpose for which the equipment is manufactured."

D. *As regards the fourth attribute in the BSNL decision of transferring of right to use and not merely a license to use the goods, shows that the control and custody of the equipment vests with the Customer itself. Further, the*

agreement gives the option to the customer to request for operator from the Appellant, who shall work totally under the supervision of the Appellant. However, even in such a case, the Customer would only be liable for any claim arising in connection with the operation of the Equipment by operators provided by Appellant. Relevant portion of the agreement is reproduced below –

> *"**4.Operating Assistance***
>
> *4.1… On Customer's request, TIPL shall provide 1 equipment operator for single shift operation of maximum 10 hours per day. Such Operators deputed by TIPL to operate the equipment shall follow the instructions and directions of the CUSTOMER.*
>
> *4.2 The CUSTOMER shall be responsible for any claim arising in connection with the operation of the Equipment by operators provided by TIPL. …."*

E. *Therefore, from the above extracted clauses of the Agreement, it is quite clear that the customer has the option to operate the equipment, and the entire effective control and right to use vests with the customers of the Appellant.*

F. *Also, it is pertinent to note that the agreement contains clause for inspection of the equipments by the Appellant. In this regard, it is submitted that the very fact that the Appellant reserve the right to inspect clearly shows that the possession and effective control has been transferred to the customers. Had the Appellant retained the possession and effective control, the Appellant would not require the customer's permission to inspect. In this regard, reliance is placed on the decision in* ***Anandcine Services Pvt. Ltd. v. Commissioner of Service Tax – II, Chennai – 2025-VIL-188-MAD-ST*** *wherein it was held that if the owner reserves the right to inspect, it very well shows that possession and effective control has been transferred from the owner.*

G. *The final attribute in the BSNL's decision is that after transferring the right to use, the same rights cannot again be transferred to others. In this case, it is submitted that the above said attribute is clearly present in the present transaction as a necessary implication. Once the equipments are delivered and installed in the customers premises, there is no question of the same being used by some other party. Thus, such condition also stands fulfilled.*

I. *Hence, from the above extracted clauses it is proved beyond doubt that the effective control and possession of the goods have been transferred to the customers of the Appellant, therefore, the same being a transaction of 'transfer of right to use the goods', thereby the same being a deemed sales and falling within the ambit of West Bengal VAT Act.*

J. *Reliance is placed on the decision of the Hon'ble CESTAT Kolkata in the case of* ***M/s. Computer Exchange Pvt. Ltd. v. Commissioner of Service Tax, Service Tax – II Commissionerate, Kolkata – 2024-VIL-1904-CESTAT-KOL-ST*** *wherein it was held that when the effective control of the equipment is with the service recipient and if the assessee is paying appropriate VAT on the transaction, the assessee is not liable to pay Service Tax under the category of 'supply of tangible goods' service. Such decision of the Hon'ble CESTAT Kolkata was affirmed by the Hon'ble Calcutta High Court in* ***2025-VIL-675-CAL-ST*** *wherein it was held that the Hon'ble Tribunal has correctly held that equipment rental constituted deemed sale attracting VAT, not service tax.*

Specific rebuttal to the findings in the impugned Order

K. *The Ld. Commissioner (Appeals) has observed that the Appellant undertakes the periodical routine and scheduled maintenance of the equipments.*

L. In this regard, the Ld.Counsel for the appellant submits that providing maintenance by the Appellant would not in any way affect the right to possession and effective control of the customers of the Appellant. Reliance is placed on the decision of the Hon'ble CESTAT, Allahabad in the case of ***M/s. Express Engineers & Spares v. Commissioner, CGST, Ghaziabad – 2022 (1) TMI 564 – CESTAT Allahabad*** *wherein it was held that "The finding in the impugned order that since the Appellant was responsible for the maintenance and repair of the diesel generator sets, the Appellant has retained effective control, cannot also be sustained because once the control and possession of the diesel generator sets was transferred to the customers, mere maintenance or repair work will not change the nature of the transaction."*

M. He relied on the following decisions wherein similar proposition of law was upheld –

- ***M/s. Inox Air Products Pvt. Ltd. (Unit-I) v. CCE & CGST, Noida – 2025-VIL-535-CESTAT-ALH-ST***
- ***M/s. Gimmco Ltd. v. CCE & S.T. Nagpur (vice-versa) – 2017 (48) S.T.R. 476 (Tri. - Mumbai)***

N. Further, the Ld. Commissioner (Appeals) has also observed that the operators of the equipment would generally be provided by the Appellant, and even though it gives the option to the customers for appointing operators, prior concurrence of the Appellant is to be obtained. It is humbly submitted that it is a settled position merely because crew are provided by the Appellant, it would not take away from effective control and possession of the equipment from the customers. Reliance is placed on the decision of the Hon'ble CESTAT, New Delhi in the case of ***Petronet LNG Ltd. v. Commissioner of Service Tax, New Delhi – 2016 (46) S.T.R. 513 (Tri. – Del.)*** *wherein it was held that mere fact that crew are employed by contractor does not in any*

manner derogate from the fact that the transaction constitutes transfer of the right to use the tangible goods, including possession and effective control of the tankers since there were several other clauses in agreements which stipulated that personnel on board the vessels operated strictly in terms of detailed instructions, guidelines and directives issued by the contractee, and they could be replaced by contractor based on requirement of contractee.

O. *Therefore, placing reliance on the aforementioned decisions, it is humbly submitted that in the instant case, as clearly evident from the contract, there is transfer of right to use the goods, i.e., transfer of effective control and right of possession of the goods to the customers, and hence, the same is a deemed sale within the West Bengal VAT Act / Central Sales Tax and falls outside the scope of levy of service tax.*

18. *Service Tax and VAT are mutually exclusive, and in the instant case demand of service tax is not sustainable since VAT has undisputedly been paid on the transaction.*

19. *He also submitted that it is a settled position of law that service tax and VAT are mutually exclusive, and in the instant case, VAT has been undisputedly discharged in the transactions.*

20. *In this regard, he further submitted supra, the transaction entered into between the Appellant and the customers has been categorized as a deemed sales and VAT has been discharged on the transaction. The Appellant has also enclosed a CA certificate certifying that VAT or CST wherever applicable has been deposited, on the transactions.*

21. *……*

22. *Further reliance is placed on the decision of the Hon'ble CESTAT Kolkata in the case of* ***M/s. Oil India Ltd. v. Commissioner of Customs & Central Excise (Appeals), Guwahati – Final Order No. 77166 of 2024 dated***

> ***11.09.2024 in ST/75060/2015*** *wherein on an identical issue, it was held that since VAT has been discharged by the assessee, the same cannot be treated as exigible to service tax.* "

8. Admittedly, in this case, the appellant has transfer of right to possession and transfer of effective control to their customers and paid VAT thereon.

9. In that circumstances, the appellant is not liable to pay service tax. Consequently, the demand of service tax is set aside.

10. In the result, the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on **17.06.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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