CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85041 of 2023

(Arising out of Order-in-Appeal No. DL/GST/COM/MUM/A-III/67/2022 dated 13.07.2022 passed by the Commissioner of CGST & Central Excise (Appeals-III), Mumbai.)

Asian Paints Limited **.... Appellants**
6A, Asian Paints House, Shanti Nagar
Santacruz (East),
Mumbai – 400 055.

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai West Commissionerate
6th Floor, D Wing, BSNL Administrative Building,
Juhu Dana Telecom Complex, Juhu Tara Road,
Santacruz (West), Mumbai – 400 0548.

APPEARANCE:

Ms. Unnati Jani, Assistant Manager (Taxation), Representative for the Appellants

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85923/2026

Date of Hearing: 02.04.2026

Date of Decision: 21.07.2026

Per: M.M. Parthiban

This appeal has been filed by M/s Asian Paints Limited, Mumbai (herein after referred to, for short, as "the appellants") assailing the Order-in-Appeal No. DL/GST/COM/MUM/A-III/67/2022 dated 13.07.2022 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of CGST & Central Excise (Appeals-III), Mumbai.

2.1 The brief facts of the case are that the appellants herein *inter alia*, are engaged in the manufacture of "Paints and Varnishes" falling under Chapter Heading 3208 & 3209 of the Schedule to the Central Excise Tariff Act, 1985. For the purpose of payment of Central Excise duty on the final products they are centrally registered with the jurisdictional Central Excise authorities as Large Taxpayer Unit (LTU) holding registration no. LTU/MUM/0118 with LTU, Mumbai. Further, in respect of various services provided by them the appellants are holding Service Tax Registration No. AAACA3622KST002, for their registered office.

2.2 During the course of EA-2000 audit of accounts of the appellants conducted in the month of April/May, 2008, the departmental authorities have noticed that the appellants have collected 'lease rental charges' from their dealers/distributors on account of supply of 'tinting machines' which were used for mixing of base paint with colour shades as per the need of the customers. The department had interpreted that the activity of such leasing of computerized colour mixing machines to various paint & hardware stores is in the nature of taxable service under the category 'Banking and Other Financial Services' as 'leasing services including equipment leasing' was covered its definition; during post negative list regime under the declared service of 'transfer of goods by way of hiring, leasing, licensing etc. without transfer of right to use such goods' provided under Section 66E of the Finance Act, 1994, and the appellants are liable to pay service tax. Since, the appellants had not paid service tax on the said services and reflected such details in the service tax returns, necessary show cause proceedings were initiated by the department. Accordingly, the department had issued Show Cause Cum Demand Notice (SCN) dated 30.03.2010, for recovery of service tax demand during the period April, 2005 to June, 2009 under Section 73(2) of the Finance Act, 1994 along with applicable interest and for imposition of penalty under Rule 15(3) ibid and Section 77, 78 of the Act of 1994. Further periodical demands were also issued to the appellants for demand of service tax for the periods July, 2009 to March, 2010; April, 2010 to December, 2010; January, 2011 to December, 2011; January, 2012 to September, 2012; October, 2012 to March, 2013; April, 2013 to March, 2014 and April, 2014 to March, 2015 vide SCNs dated 17.06.2010, 09.03.2011; 07.02.2012, 06.12.2012, 08.08.2013, 20.10.2014 and 27.04.2015, respectively. The said SCNs, was adjudicated upon by the original authority in passing an Order-in-Original No.52 to 59/CGST-MW/ ADC/AS/ASIAN PAINTS/20-21 dated 27.02.2021, wherein all the proposals made in the SCNs were confirmed. The original authority also imposed penalty under Sections 77 & 78 of the Act of 1994. Being aggrieved with the order of the original authority, the appellants had preferred an appeal before the Commissioner (Appeals), CGST & Central Excise, Mumbai-III, who had set aside the order of the original authority for the pre-negative list period i.e., prior to 01.07.2012 and upheld the order of the original authority for post negative list period along with interest and penalty. Feeling not satisfied with above Order-in-Appeal dated 13.07.2022, the appellants had preferred this appeal before the Tribunal.

3.1 The representative of the appellants company has submitted that the appellants have entered into a lease agreement with their distributors, which fulfil the criteria of (a) goods should be available for delivery; (b) presence of consensus *ad idem* as to the identity of the goods between the parties; (c) The transferee should have a legal right to use the goods; (d) there shall be right of exclusion to the transferor on the right to use, during the license period; (e) the owner cannot again transfer the same rights to others, as laid down by the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited Vs. Union of India* - 2006 (2) S.T.R. 161 (S.C.). She further submitted that the relevant clauses in the agreement dated 06.03.2009 submitted as part of the appeal papers are (a) 9.1, 6.1.4, 8.15; (b) Schedule-I; (c) 8.4, 7, 6.4; (d)13.1; (e) 11.2, demonstrating compliance with the aforesaid points of Hon'ble Supreme Court's order are present in the agreement entered with the distributors of the appellants' company. This has also been reiterated in the Education Guide on 'Taxation of Services' issued by Central Board of Excise & Customs (CBEC) dated 20.06.2012 in paragraph 6.6.1.

3.2 Further, she submitted that the allegation of suppression in not sustainable as the entire details have been furnished in their statutory returns and the entire basis of the SCN is based on the information disclosed in their statutory records. Thus, he claimed that demand of service tax by invoking extended period and imposition of penalty is not sustainable.

3.3 In this regard, she also relied upon the decisions of the appellate forum in the following cases:

(i) *Subhash Light House Vs. Commissioner of Central Goods & Service Tax, Audit-II, New Delhi* – 2022-VIL-106-CESTAT-DEL-ST

(ii) *Express Engineers & Spares Pvt. Ltd. Vs. Commissioner of Central Goods & Service Tax, Ghaziabad* – 2022-VIL-36-ALT-ST

(iii) *Universal Dredging and Reclamation Corporation Ltd. Vs. Commissioner of Central Goods & Service Tax, Madurai* -2020-VIL-285-CESTAT-CHE-ST

(iv) *Lindstorm Service India Private Ltd. Vs. Commissioner of Central Excise & Service Tax, Haryana* -2019-VIL-524-CESTAT-CHD-ST

(v) *GMMCO Ltd. Vs. Commissioner of Central Excise & Service Tax, Nagpur* -2020-VIL-285-CESTAT-CHE-ST

(vi) *HLS Asia Ltd. Vs. State of Assam* - (2007) 8 VST 314 (Gau. HC DB)

(vii) Great Eastern Shipping Vs. State of Karnataka – (2204) 136 STC 519 (Kar HC DB)

(viii) Aban Lloyd Chiles Offshore Ltd. Vs. State of Tamil Nadu – (2012) 53 VST 89 (Mad HC DB)

Thus, she claimed that the impugned order is not sustainable.

4. Learned Authorised Representative (AR) appearing for the department, on the other hand, reiterated the findings of the authorities below. Further, he submitted that the essential condition of transfer of effective control is not satisfied in the present case, and therefore he claimed that there is no merit in the appeal filed by the appellant and the same is liable to be dismissed.

5. Heard both sides and perused the records of the case. I have also examined the submissions advanced by both sides and have also perused the additional written submissions in the form of paper books submitted in this case.

6. The issue involved in this appeal is to decide whether the activity of leasing of tinting machines by the appellants to their dealers/distributors and collection of 'lease rental charges' from them is liable to service tax under the category of 'Supply of Tangible Goods for Use' (STGU) in terms of the legal provisions of the Finance Act, 1994.

7.1 It is a fact on record that during the course audit of the records of the appellants & its scrutiny, and upon submission of details of 'lease rental charges' collected by the appellants through their letter dated 03.08.2009, the department had interpreted that the appellants had collected such charges without payment of service tax and issued various SCNs for different period. Though the demands for confirmed by the original authority for the entire period i.e., April, 2005 to March, 2015, learned Commissioner (Appeals) in the impugned order dated 13.07.2022 had set aside the demands confirmed by the original authority for the pre-negative list period i.e., prior to 01.07.2012 and upheld the order of the original authority for post negative list period i.e., from 01.07.2012 to 31.03.2015 for confirmation of service tax demand along with interest and penalty.

7.2 From the plain reading of the relevant legal provisions of the Finance Act, 1994, it transpires that for the period relating to the pre-negative list regime *i.e.,* prior to 01.07.2012, the taxability was determined in terms of coverage of an activity under the service tax net by defining taxable services under section 65(105) *ibid*, which enumerated each of the specified services. On this aspect, the learned Commissioner (Appeals) have already found that the appellants are not collecting management fee/processing fee and there is no collection of monthly EMIs, and hence he has held that the lease agreement entered by the appellants is not an agreement of financial lease, on which service tax is leviable as 'leasing services, including equipment leasing'. Thus, he had dropped the service tax demands for the period prior to the negative list regime i.e., prior to 01.07.2012. The aforesaid position has not been appealed against here, and thus it is not the matter of dispute in the present appeal. The only dispute is whether the leasing of tinting machine, during the period of post-negative list regime i.e., w.e.f. 01.07.2012, would be covered under the category of services hitherto defined under the erstwhile regime as separate taxable service and were merged under a common phrase i.e., 'service' as defined under section 65B(44) *ibid*, which was brought into effect from 01.07.2012.

7.3 In order to arrive at a conclusion whether the activities undertaken by the appellants in providing tinting equipment on operating lease arrangement basis, is a taxable service under the category STGU or whether it is 'deemed sale', I would like to examine the relevant agreement entered in this regard by the appellants with their dealers/distributors, *vis-a-vis* the five criteria as laid down by the Hon'ble Apex Court in the case of *Bharat Sanchar Nigam Limited* (*supra*) for determining where the transaction undertaken in respect of the "operating lease" can be said to be a transaction of deemed sale as per Article 366 (29A) (*d*) of the Constitution of India.

7.4 The appellants have submitted the copy of the lease agreement dated 06.03.2009 entered into between them and their distributors/dealers towards leasing of the machine i.e., 'Automated Colour Dispenser with all relevant software' along with 20 litre capacity Gyro shaker and an Uninterrupted Power Supply (UPS), cap sealing machine as detailed in Schedule-I annexed to such agreement. Further, lease rentals payable in respect of leasing of such machine have also been fixed for a period of five years, at a monthly rental specified for each year, as detailed in Schedule-II. These clauses provide for the terms and conditions governing the leasing of the machine, which include that the dealer/distributor taking lease of the equipment i.e., lessee shall issue a certificate of having received the delivery of equipment; the leased equipment is used only at the lessee's premises and the same shall not be shifted elsewhere without prior written consent of the lessor; lessee shall not sell the base material of paints without tinting i.e., adding the colourants to the paints by use of the leased equipment; the lessee shall keep the equipment, at all times in its possession and control at the premises indicated and accepted by the Lessor, unless otherwise permitted by the lessor in writing etc. The lessee upon completion or termination of the lease period shall return the leased equipment to the lessor in the same condition in which it was handed over, except for the reasonable wear and tear due to efflux of time. Further, clause 8.18 of the said agreement specifically provide for use and operate the leased equipment by the lessee, observing carefulness and maintaining it in good condition, and if repair is required then take the help of engineers and technicians deputed or recommended by the lessor. It is also provided in clause 8.8 that it is for the lessee, who shall allow the lessor or his authorised representative to inspect and repair the equipment, whenever considered necessary. These clearly provide that the identified goods to be provided under lease arrangement was knows to both parties, i.e., the appellant and their dealers/distributors; the said equipment was delivered to the dealer/distributor and the receipt was acknowledged; the lessee dealer/ distributor was using the leased equipment, without any intervention of the lessor, in their daily activities of tinting and offering the paints to the required shade as ordered/selected by their customers; further, lease rentals were paid by the lessee to the lessor; VAT was duly paid on all such rentals etc., acknowledging that these activities are in the nature of 'deemed sale'.

7.5 It is also on record that in the invoice No.772123166 dated 17.01.2013 and similar invoices issued in respect of lease rentals for the equipment leased in the agreement dated 06.03.2009, Value Added Tax (VAT) at the rate of 13.5% have been paid by the appellants. Further, in the periodical VAT returns filed for the quarter/financial year also, the appellants have indicated the payment of VAT for such leased equipment and the same have been duly assessed by the respective State Sales Tax/VAT authorities.

7.6 I find that the service tax levy on STGU services was firstly introduced in the Union Budget for the year 2008. In the instructions issued by the Tax Research Unit (TRU) of the Ministry of Finance to the CBIC field formations vide D.O.F. No.334/1/2008-TRU dated 29.02.2008, it has been explained that the levy of service tax is on the transaction of allowing another person to use the goods, without giving legal right of possession and effective control. It is also explained that this is for the reason that the activity is not being treated as sale of goods under the concept of 'deemed sale' under Article 366(29A)(d) of the Constitution of India and therefore treated as a 'service'. The relevant portion of the said instructions in paragraph 4.4 is extracted and given below:

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 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.

On careful perusal of the aforesaid clarification issued by the Ministry of Finance, it transpires that where any goods/equipment is given under a lease arrangement, wherein both possession and effective control of such goods/equipment have been handed over to the lessee, then it would be categorised as 'deemed sale, leviable to VAT and service tax will not be charged on such activities. In the present case, on a sole evidence of the VAT payments made by the appellants for the lease of tinting equipment, and on the basis of the Ministry's clarification alone, I am of the preliminary view that the impugned order is liable to be set aside.

7.7 I further find that CBIC *vide* its circular No. 198/08/2016-ST dated 17.08.2016 has also clarified on the issue of service tax liability in case of hiring of goods without transfer of the right to use of the goods, and had reemphasized the need to examine each of the agreement on the basis of five points criteria given by the Hon'ble Supreme Court in BSNL case, as follows:

"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 v. 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 permissions or licenses required therefor 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 judgements 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 v. International Travel House Ltd — Delhi High Court judgement dated 8-9-2009 in ST Appeal 10/2009

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

3.2.3. State Bank of India v. State of Andhra Pradesh reported in 1988 (70) STC 215 A.P

3.2.4 Ahuja Goods Agency v. State of Uttar Pradesh reported in 1997 (106) STC 540

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

3.2.6 G. S. Lamba and Sons v. State of Andhra Pradesh reported in 2015 (324) E.L.T. 316 AP

4.1 There will also be cases involving either a financial lease or an operating lease. The former generally involves a transfer of the asset and also the risks and rewards incident to the ownership of that asset. This transfer of the risks *and rewards is also recognised in accounting standards. It is generally for a long term period which covers the major portion of the life of the asset and at the end of the lease period, usually the lessee has an option to purchase the asset. The lessee bears the cost of repairs and maintenance and risk of obsolescence also rests with him. In contrast, an operating lease does not involve the transfer of the risks and rewards associated with that asset to the lessee. It is for a short term period and at the end of the lease period the lessee does not have an option to purchase the asset. The cost of repairs, maintenance and obsolescence rests with the lessor.*

4.2 Similarly in the aircraft industry there are "dry leases" and "wet leases". Generally speaking, "wet leases" may involve short term provision of an aircraft along with crew, maintenance and insurance while the lessee bears other operating expenses. In contrast, a "dry lease" is for a relatively longer term and involves the provision of an aircraft only without crew.

4.3 The above two situations have been elaborated only to explain and emphasize the diverse nature of such transactions. There can be variations and in some cases, a combination.

5. In all these cases, no a priori generalisations 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 pronouncements."

7.8 On the above basis, I had examined various clauses contained in the sample Lease Agreement submitted by the appellants. This sample agreement has been entered into by the appellants with dealer/distributor, and some of the important clauses which are relevant for such examination of 5-point criteria as laid down in the judgment of the Hon'ble Supreme Court in the case of *BSNL (supra)* are as follows:

"6.1 The Lessee has specifically agreed with the Lessor that the Lessee:

6.1.1 Shall not sell the base material without tinting ie. adding the colorants to the base material

6.1.2 Shall display the retail sale price of the paint on addition of the colorants, for the shades required, as fixed by the Company at a prominent and conspicuous place in the Lessee's premises for the information of the consumer.

6.1.3 Shall issue a cash receipt / printed computer slip which shall contain, inter-alia

a. address/identification mark of the Lessee
b.name of the shade
c. net contents of finished paint after tinting i.e. after addition of colorants to the base material
d. sale price of the paint after tinting
e. date of sale

6.1.4 Shall ensure that the equipment leased out is kept and used only at the Lessee's premises and not to move the same or shift it elsewhere without the prior written consent from the Lessor.

6.1.5 Shall always ensure that the final products sold to the consumer are not below the standard quantities prescribed in the Standard of Weights and Measures (Enforcement) Act, 1976, The Standard of Weights and Measures (Packed Commodities) Rules, 1977 and where applicable. The Standards of Weights and Measures (Enforcement) Act 1985.

6.2. It is specifically understood that the Lessor has agreed to lease the equipment to the Lessee only on the basis of the above assurance / undertakings given by the Lessee

6.4. Subject to Clause 10.3, the Lessee shall be responsible for the service of the Equipment. Since the equipment is technologically complex, the Lessor has at the Lessee's request informed the Lessee that an Annual Maintenance Contract (AMC) be entered into with M/s Colourworld Solutions and/or M/s Advance Graphics Systems The Lessee has expressly agreed to the same and agreed to pay the AMC charges for servicing of Automatic Colour Dispenser with UPS and Gyroshaker by the said M/s Colourworld Solutions and / or Advance Graphics Systems and the Lessee assures the Lessor that such servicing for the Automatic Colour Dispenser with UPS {uninterrupted power supply} and Gyroshaker shall be performed as and when required.

7. The Lessee agrees to keep the Lessor indemnified from all claims, losses and damages which the Lessor may incur or sustain by reason of any unauthorised, illegal or irregular use of the equipment or improper tinting by the Lessee, its men, employees, etc., including but not limited to any claim or notice or prosecution launched under the laws pertaining to Weights and Measures.

8.4. The Lessee shall abide by all the conditions of any licence, permit or other rule applicable to the business of the Lessee or to the equipment.

8.7. The Lessee shall strictly utilise the equipment(s) only for obtaining shades by using and tinting the bases and strainers made by the lessor alone and use the equipment only to tint and sell the products of the Lessor and of no other company.

8.8. The Lessee shall allow the Lessor through its authorised representative(s) to inspect and repair the equipment(s) whenever considered necessary by the Lessor.

8.14. The Lessee shall return the leased equipment at its cost upon termination of the lease in the same condition in which it was at the time of commencement of lease, reasonable wear and tear due to efflux of time excepted.

8.15. The Lessee shall keep the equipment, at all times in its possession and control at the premises indicated and accepted by the Lessor, unless otherwise permitted by the Lessor in writing.

8.18. The Lessee shall use and operate the equipment carefully and maintain the same in good condition and repair for which the Lessee shall

> *take the help of Engineers and Technicians deputed / recommended by the Lessor only and to act in conformity with the instructions or operation manual given by the manufacturer and/or the Lessor.*
>
> *9.1 It is hereby agreed that the Delivery of Equipment's shall be taken by the Lessee at such place as the parties may mutually agree and the Lessee shall issue a certificate of having received Delivery of the Equipment.*
>
> *10.1. The Lessor shall insure the Equipment in its own name and/or jointly with the bank, as the case may be and the insurance premium of the Equipment shall be borne by the Lessor."*

7.9 On careful examination of the above clauses, I am of the considered view that in the operational lease transaction as above, there is complete compliance with the five points criteria laid down by the Hon'ble Supreme Court, as follows:

(i) the goods *i.e.,* the tinting equipment have been agreed for delivery from the lessor to lessee;

(ii) on identity of the goods *i.e.,* the tinting equipment and other items associated with under the lease arrangement, the lessor and lessee both are in agreement of the goods handled in such lease and as per the terms and conditions thereof;

(iii) the lessee being the transferee has got the legal right to use the tinting equipment(*s*) and consequently all legal consequences of such use, including any permissions or licenses required therefor are made available to the lessee;

(iv) there is a definite lease period, during which the lessee has obtained the legal rights, to the exclusion to the lessor *viz.* a "transfer of the right" to use as the equipment(*s*) have been kept at the disposal of the lessee;

(v) The lessor having agreed to give to the lessee, the delivery and possession of the equipment/tinting machine, can have the return of the same only on completion of normal lease period or under early return clause, and thus cannot again transfer the said equipment to any other person during the lease period.

7.10 Since as per the terms of the agreement clauses as stated above, I find that all the five conditions as laid down by the Hon'ble Supreme Court in case of *BSNL* (*supra*) are satisfied, I have no hesitation in holding that the transaction in the case before us is of 'deemed sale' as per Article 366 (29A) (*d*) of the Constitution of India.

8.1 I find that Co-ordinate Bench of this Tribunal has in case of *Arval India Pvt. Ltd Vs. Principal Commissioner of Service Tax, Mumbai-IV – 2020 (41) G.S.T.L. 528 (Tri.-Mumbai)* had concluded in respect of similar operating lease agreement, that the said agreement was that of 'deemed sale'. The relevant paragraphs of the said order are extracted below:

> *"2. M/s. Arval India Pvt. Ltd. provides motor vehicles, identified by their corporate customers, on lease for specified periods and which may, on exercise of option by the lessee, incorporate maintenance and repair (denominated as 'fleet management') during the tenor of the agreement. The consideration, to be paid at regular intervals specified in the lease agreement, is sought to be brought within the authority to levy service tax under Finance Act, 1994. The impugned order has upheld the taxability while discarding the proposal to invoke the extended period beyond eighteen months computed backwards from the relevant date, which is under challenge by the assessee-appellant. There is no dispute that the tax liability on 'fleet management' has been discharged as provider of 'management, maintenance or repair service' and on commission received from insurance companies as provider of 'business auxiliary services' while, claiming the transaction to be 'deemed sale', the 'lease rental' was not offered up as consideration for rendering taxable service. A portion of the confirmed demand pertains to the period prior to 'negative list' regime of taxation of services. Revenue challenges the discarding of tax liability for the extended period proposed in the show cause notice as well as the grant of abatement of sixty per cent available under Notification No. 1/2006-S.T., dated 1st March, 2006.*
>
> *3. The levy of service tax on 'rent-a-cab' was subject to detailed examination by the Hon'ble High Court of Gujarat in Commissioner of Service Tax v. Vijay Travels [2014 (36) S.T.R. 513 (Guj.)] and we do not need to look elsewhere for a more authoritative exposition. By incorporation of Section 65(105)(o) in Finance Act, 1994 with effect from 16th July 1997, the 'service provided or to be provided to any person by a rent-a-cab scheme operator in relation to the renting of a cab' was taxable and the two key expressions deployed therein, viz., 'rent-a-cab scheme operator' was defined as*
> *'(91)... means any person engaged in the business of renting of cabs' and 'cab' as*
> *'(20)... means -*
>
> > *(i) a motorcab, or*
> >
> > *(ii) a maxicab, or*
> >
> > *(iii) any motor vehicle constructed or adapted to carry more than 12 passengers, excluding the driver, for hire or reward...'*
>
> *in Section 65 of Finance Act, 1994. The definition has evolved over the time that the activity was brought within the tax net. Initially, it was intended to subject the business of renting motor cabs to persons desiring to drive such cabs for their own use, and including a driver should the hirer so desire, as per licensing by 'State transport authorities' under the eponymous scheme that infused a regulatory framework for motor cabs so handed over for use other than as common public transport. By amending the definition in Section 65 of Finance Act, 1994, from time to time, variations in usage by recipients of service*

that supplemented or supplanted purchase of such vehicles for self-use were brought within the ambit of taxation.

4. The original object of the levy was the use of motor cabs by persons other than owners but distinguishable from patronage of taximeter cabs. The objective, thus, was not merely garnering of revenues from a new source but also to ensure that tourist taxi operations were not targets of a discriminatory levy. The two services that were thereby brought within the net fulfilled similar customer demands in the market space. Though the appellation was not varied, subsequent amendments extended the scope of tax to cover all users of every kind of automobile for carriage of persons without the right of ownership. In other words, the substitution of ownership by usage, that was restricted only by certain minimal limitations to distinguish from the former, was no longer an activity beyond the pale of tax.

** ** **

12. Impliedly, neither did the taxing powers vested in the Union extend either to 'sale' or 'deemed sale' nor did all of the several 'deemed sales' incorporated in the constitutional amendment include some component that was not 'deemed sale' outside the pale of taxation in List-II in the Constitution of India. The impugned order has erred in presuming so. In 'works contracts', there is an aspect that is beyond the taxing powers of the States which could, under Parliamentary sanction, be taxed by the Union. In both 'sales' and 'services', the taxable event is determined by the existence of 'buyer/recipient' and 'seller/provider' with the conclusion of the contractual obligation as the definitive event to be taxed. In the absence of concurrent jurisdiction, the vivisection of such enumerations in Article 366(29A) of the Constitution of India alone can confer the authority under List-I of the Seventh Schedule in the Constitution of India.

13. Agreements/contracts of 'lease' are, acknowledgedly, taxable as 'deemed sale'; it is not the case of Revenue that any portion of the consideration for 'lease' is not 'deemed sale'. As the entire rental is subject to tax as 'deemed sale', there is no scope for any portion thereof to be leviable to tax by the Union and, thereby, under Finance Act, 1994.

14. In the above circumstances, and in the light of discharge of tax liability under Finance Act, 1994 on some of the consideration earned by the assessee, the scope for subjecting 'lease rental' to tax, as proposed in the show cause notice, cannot sustain in the absence of a valid machinery provision recognized in the taxing statute. Accordingly, the impugned orders are set aside and appeal of assessee allowed while appeal of Revenue stands dismissed."

8.2 In view of the above discussions, I find that the grounds for confirmation of service tax demands in the order of the adjudicating authority, which was upheld by the learned Commissioner (Appeals) is not proper and justified. In view of the above, I am of the considered view that the impugned order upholding the confirmation of adjudged demands by the original authority, have no legal basis and accordingly is liable to be dismissed as being not legally sustainable.

9. As I have disposed the appeal on merits and factual matrix of the case, I am not recording any findings on other submissions made by the appellant, in respect of invocation of extended period and imposition of penalty. Further, as rightly held in a number of decisions by the higher judicial forum, in respect of issues concerning interpretation of law, extended period of limitation cannot be invoked and penalty for evasion or for violation of law cannot be imposed. Therefore, in the present case, the adjudged demands having been held as not sustainable on merits, the imposition of penalty against the appellant by invoking extended period of demand is also not legally sustainable.

10. In view of the foregoing, I hold that the impugned order is liable to be set aside to the extent it had confirmed the adjudged demands on the appellants.

11. In the result, the impugned order dated 13.07.2022 is set aside, and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 21.07.2026)

(M.M. Parthiban)
Member (Technical)

Sinha