

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO.3**

SERVICE TAX APPEAL NO.51146 OF 2022

[Arising out of Order-in-Appeal No.349(SM)/ST/JPR/2021 dated 18.11.2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Shri Sai RMC

Appellant

Jonayacha Mod, Shahjahanpur,
Distt.-Alwar (Raj.)-301705

Vs.

**Assistant Commissioner, Central Goods &
Service Tax Division-E, Behror (Alwar)**

Respondent

Appearance:

Present for the Appellant: None

Present for the Respondent: Shri M.M. Rahman, Authorised Representative

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 06.10.2026

Date of Decision:16.10.2026

Final Order No.51616/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s. Shri Sai RMC¹, against the Order-in-Appeal No.349(SM)/ST/JPR/2021 dated 18.11.2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur confirming the demand of service tax amounting to Rs.2,89,224/- along with interest and penalty.

1. The Appellant

2. The brief facts are that the appellant was engaged in providing taxable service i.e. Goods Transport Agency Service and was registered with service tax department. During verification of third party information, the department observed that the tax deducted at source (TDS) for the year 2012-13 was Rs.27,31,350/-. In order to ascertain the facts, documents were sought from the Appellant for the Financial Year 2012-13 to 2015-16. The Appellant provided the 26AS. On scrutiny of ST-3 returns filed by the Appellant, it was noticed that the Appellant had paid service tax only on 'GTA Service and on Manpower recruitment/supply service' under RCM. As per 26AS, TDS had been deducted under Section 194 C and 194 I of the Income Tax Act i.e. under the head of 'payment to contractors and 'renting of immovable property. Therefore, it appeared that the appellant had not paid Service Tax amounting to Rs.11,84,194/-. A Show Cause Notice dated 28.03.2018 was issued to the Appellant, proposing therein recovery of Service Tax amount of Rs.11,84,194/- alongwith interest under proviso to Section 73(1) and Section 75 of the Act respectively, Imposition of penalty under Section 77(1)(c) and 78 of the Act, was also proposed. The adjudicating authority vide Order-in-Original dated 07.08.2020 confirmed the demand of Rs.19,047/- against job work done by the Appellant, Rs.2,89,224/- against hiring charges for TM Machine and Rs.26,100/- against renting of immovable property (total Rs.3,34,371/-) alongwith interest, penalty of Rs.3,34,371/- under Section 78 and of Rs.10,000/- under Section 77(1)(c) was imposed. Being aggrieved with the said Order-in-Original dated 07.08.2020, the Appellant filed an appeal before the Commissioner (Appeals). The

Commissioner (Appeals) vide Order-in-Appeal dated 18.11.2021 dropped the demand of Rs.19,047/- confirmed on the amount received from sale of ready mix concrete, holding that the Appellant was not required to pay Service Tax on the RMC cleared on job work basis. As regards the Service Tax of Rs.2,89,224/, the Commissioner (Appeals) noted that the Appellant had already paid amount of Rs.72,306/- alongwith interest of Rs.4,140/- on receipt of Rs.23,40,000/- towards "Transportation of Goods by Road Service". The impugned order has held the Appellant was liable to pay Service Tax on full amount received against hiring of Transit Mixture Machine, and upheld the demand of Service Tax amounting to Rs.2,89,224/-.

3. No one appeared on behalf of the appellant despite several opportunities. In the hearing on 14.07.2026, the appellant was warned of the last opportunity. However, when the case was called out, no one appeared nor any request for adjournment had been received. Hence, we have taken up the case for final hearing by taking into consideration the grounds mentioned in the Appeal memo.

3.1. The appellant has submitted that the order of the Appellate Authority is not based on the facts of the case hence illegal and bad in the eye of the law. It has been further submitted that the Appellate Authority had ignored the fact that the vehicles were provided for freight on payment, and the control of the vehicles was not handed over. It has been also stated that the adjudicating authority had wrongly interpreted the service and confirmed the tax amount of Rs.2,89,224/- and penalty. The Appellant had correctly charged the

tax and deposited the same by claiming the benefit of the notification issued for Goods Transport Agency. The Appellate Authority had also erred in imposing the penalty amount of Rs.10000/- under section 77(1)(c) of the Act.

4. Learned authorized representative for the Department reiterated the findings given in the Order-in-Appeal. He submitted that the Appellant had paid Service Tax of Rs.72,306/- along with interest of Rs.4,140/- on receipt of Rs.23,40,000/- classifying the service as "Transport of goods by road service'. M/s Sai Nath RMC had issued letter for requisition of 2 TM machines from the Appellant for transportation of RMC on amount of Rs.3,90,000/- per month. He stated that it is mentioned in the letter that the Driver's maintenance and diesel would be within the scope of the Appellant. He contended that this type of contract was transfer of right to use the vehicle, rather than providing service of transportation and is classifiable under supply of tangible goods. Further, learned authorized representative submitted that the Appellant had not produced any evidence before the adjudicating or appellate authority to show that the consignment notes were issued by him. Thus, the appellant was liable for payment of Service Tax on full amount received against renting of Transit Mixture machines.

5. We have heard Shri M.M. Rahman, learned authorized representative for the Department. No one appeared on behalf of the appellant.

6. In order to appreciate the submissions, we need to look at the findings in the impugned order:

"7.1 As regard demand of Service Tax amounting to Rs. 2,89,224/-, I observe that the appellant has paid an amount of Rs.72,306/- along with interest of Rs.4,140/- on the receipt of Rs. 23,40,000/- in this regard, classifying the service as Transport of goods by road service. The adjudicating authority has confirmed the demand on the ground that the appellant did not provide any document for classification of the service and the service provided by the appellant falls under 'supply of tangible goods service. I find that the appellant has produced copy of letter issued by M/s Sai Nath RMC, to whom the appellant provided TM machines for transportation of RMC. I find that the letter was issued for requisition of 2 TM machines, for which an amount of Rs.3,90,000/- per month. It is mentioned in the letter that scopes of Driver's, maintenance and diesel shall be in the scope of the appellant.

7.2 I find that in the case of Birla Ready Mix Vs. Commar of C. Ex., Noida, [2013 (30) S.T.R. 99 (Tri. - Del.)], the Honble CESTAT has held that this type of contract is one for transfer of right to use the vehicle rather than for providing service of transportation. Gist of the judgment is as under-

.....

.....

7.3 I find that the appellant has not put forth any evidence to show that consignment notes were issued by him in this regard. Thus, in the light of the above judgment, I hold that the service does not fall under transport of goods by road service and the appellant is liable for payment of Service Tax on the full amount received against hiring of Transit Mixture machines. However, the amount already paid is liable to be appropriated."

6.1 We note that the supply of Tangible Goods was introduced in 2008. We note that the definition of the service as per Section 65 (105) (zzzzj) of Finance Act is 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."

As per the above definition, the decisive question is not merely whether the goods were physically handed over, but the test is whether the contract transferred both, Right of possession and Effective control over the goods. The issue is a question of fact, which is to be determined from the Agreement and the actual manner of operation. The relevant factors to be considered would be, control, deployment, operation, maintenance, movement, licences, personnel and the permitted use of the equipment. A transfer of the right to use goods generally requires the user to obtain effective control and the ability to use the goods to the exclusion of the supplier during the agreed period. Merely allowing a customer to use equipment while the supplier retains operational control does not ordinarily amount to such a transfer. In the instant case, it is evident that the appellant had transferred the right to use the vehicle.

7. We note that the learned authorized representative relied on the Supreme Court judgment in M/s. K.P. Mozika vs. ONGC in C.A. No.3458/2017 dated 09.01.2024 wherein the Hon'ble Apex Court had examined whether by hiring of motor vehicles/cranes, there is a transfer of right to use any goods. In the said case, the Apex Court had examine the question as to whether hiring cranes, trucks, trailers, tankers and similar vehicles to ONGC and IOCL involves a "transfer of the right to use goods", which is a deemed sale under Art.

366(29A)(d) and s. 2(43)(iv) of the Assam VAT Act, or a service. The appeals arose from Gauhati High Court judgments (25.11.2009 and others) that held these contracts to be deemed sales. The Court read s. 65(105)(zzzzj) of the Finance Act, 1994 (in force from 16.5.2008) as covering supply of tangible goods for use without transfer of possession and effective control. It held that where substantial control stays with the contractor, there is no transfer of the right to use and the transaction is a service. The relevant paras are reproduced hereinafter:

"41. Now, at this stage, we may refer to Section 65(105)(zzz.z)) of the Finance Act, which was brought into force with effect from 16" May 2008. Section 65(105)(zzzzj) reads thus:

"Section 65. Definitions-.....

(1) ..

.....

(105) "Taxable service" means any service provided or to be provided -

(a) ..

.....

(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."

It provides that "taxable service" means any service provided to any person by any other person in relation to the supply of tangible goods, including machinery, equipment and appliances for use without transferring the right of possession and effective control of such machinery, equipment and appliances.

42. Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the control of the goods by the user. When the substantial control remains with the

contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of Section 65(105) (zzzzj) of the Finance Act after the said provision came into force.”

8. In the instant case, it is an admitted fact that the appellant provided TM Machines for transportation of RMC, and the requisition letter clearly states that the Driver, maintenance of the vehicles and cost of the diesel would be undertaken by the appellant. The impugned order has noted that no evidence has been submitted that the appellant was providing GTA service. Even before the Tribunal, no such evidence has been led by the appellant. Hence, we find that the appellant’s case is squarely covered by the Apex Court judgement supra.

9. In view of the above, we find no infirmity in the impugned order and we uphold the same. Consequently, the appeal stands dismissed.

(Order pronounced on **16.10.2026**)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)