CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 897 of 2011

(Arising out of Order-in-Original No.103/2010-ST (Commr.) dated 30.12.2010 passed by the Commissioner of Customs, Central Excise and Service Tax, Large Taxpayers Unit, Bangalore.)

Praxair India Private Limited
"Praxair House"
No.8, Ulsoor Road,
Bangalore – 560 042.

Appellant(s)

VERSUS

The Commissioner of Central Excise & Service Tax
JSS Towers, 100 Feet Ring Road,
Banashankari III Stage,
Bangalore – 560 085.

Respondent(s)

APPEARANCE:

Shri Harish Narasappa, Sr. Advocate for the Appellant

Shri Neeraj Kumar, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20769 / 2025

DATE OF HEARING: 08.04.2025
DATE OF DECISION: 06.06.2025

PER : P.A. AUGUSTIAN

The appellant carried out the activity of construction and operation of oxygen plant. They have made arrangements with M/s. Swil Limited to establish and commission of oxygen plant on 15.02.2005. The agreement also provided for operation and maintenance of plant. As per the charges detailed in the agreement, appellants were paying service tax on the operation and maintenance charges; however, they were not paying service tax on the lease rent received from M/s. Swil Limited. Thus, the issue in the present appeal is regarding service tax demand under the category of 'Banking and Other Financial

Services' for the period from April 2006 to December 2009 with regard to releasing of the equipments for setting up of oxygen plant. Alleging that the appellant is liable to pay service tax for the lease rental received from M/s. Swil Ltd. for the period from April 2006 to December 2009, proceedings were initaited and as per the impugned order, adjudicating authority confirmed the demand and also imposed penalty. Aggrieved by the said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel for the appellant drew our attention to the findings given by the adjudicating authority and submits that the finding regarding conditions 1 and 2 of the definition under financial leasing is sustainable. However, regarding fulfillment of the conditions No.3 and 4 regarding lease payment is calculated so as to cover the full cost of asset together with interest charges; and condition that the lessee is entitled to own or has the option to own the asset at the end of the lease period after making the lease payment is factually wrong and due to that the activity provided by the appellant is not falling under the category of Banking and Other Financial Services and not lialbe to pay service tax.

3. Learned counsel further submits that as regarding the lease rentals, they were charging VAT as arrangement with M/s. Swil Ltd. on 'operating lease' and is for right to use and not a 'financial lease and hence, not subject to service tax. Learned counsel also drew our attention to the agreement entered by the appellant with M/s. Swil Ltd. on 15.02.2005 to substantiate the above submissions. Further submits that the issue is no more *res integra* as the issue is settled in their favour in appellant's own case by this Tribunal as reported in **2018 (SCC) Online Cestat 10473**.

3.1 Learned counsel also submits that the issue regarding financial lease was considered by the Hon'ble Supreme Court in the matter of **Asea Brown Boveri Limited vs. Industrial Finance Corporation of India and Ors.: (2004) 12 SCC 570** and it is held that :

> "17. In our opinion, financial lease is a trasnaction current in the commerical world, the primary purpose whereof is the financing of the purchase by the financier. The purchase of assets or equipments or machinery is by the borrower. For all practical purposes, the borrower becomes the owner of the property inasmuch as it is the borrower who chooses the proerty to be purchased, takes delivery, enjoys the use and occupation of the property, bears the wear and tear, maintains and operates the machinery/equipment, undertakes indemnity and agrees to bear the risk of loss or damage, if any. He is the one who gets the property insured. He remains liable for payment of taxes and other charges and indemntiy. He cannot recover from the lessor, any of the abovementioned expenses. The period of lease extends over and covers the entire life of the property for which it may remain useful divided either into one term or divided into two terms with clause for renewal. In either case, the lease is non-cancellable."

3.2 The same issue was also considered by the Hon'ble Supreme Court in the matter of **New Okhla Industrial Development Authority vs. Anand Sonabadra & Manish Gupta and Anr.: (2023) 1 SCC 724** and it is held that even financial lease and operating lease can fall under the category of financial lease subject to the following criteria:

> "62. The Rules, which are relevant in regard to the specification of a lease as a financial lease are set down as Rules 61 to 67 of Indian Accounting Standards [for short "IAS"]. They have been made under Section 133 of the Companies Act, 2018.
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> **"Classification of leases (paragraphs B53 B58)**
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> 61. A lessor shall classify each of its leases as either an operating lease or a finance lease.
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> 62. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying

asset. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

63. Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. Examples of situations that individually or in combination would normally lead to a lease being classified as a finance lease are:

(a) the lease transfers ownership of the underlying asset to the lessee by the end of the lease term;
(b) the lessee has the option to purchase the underlying asset at a price that is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception date, that the option will be exercised;
(c) the lease term is for the major part of the economic life of the underlying asset even if title is not transferred;
(d) at the inception date, the present value of the lease payments amounts to at least substantially all of the fair value of the underlying asset; and
(e) the underlying asset is of such a specialised nature that only the lessee can use it without major modifications.

64. Indicators of situations that individually or in combination could also lead to a lease being classified as a finance lease are:

(a) if the lessee can cancel the lease, the lessor’s losses associated with cancellation are borne by the lessee; the
(b) gains or losses from the fluctuation in the fair value of the residual accrue to the lessee (for example, in the form of a rent rebate equaling most of the sales proceeds at the end of the lease); and
(c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.

65. The examples and indicators in paragraphs 63–64 are not always conclusive. If it is clear from other features that the lease does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset, the lease is classified as an operating lease. For example, this may be the case if ownership of the underlying

> asset transfers at the end of the lease for a variable payment equal to its then fair value, or if there are variable lease payments, as a result of which the lessor does not transfer substantially all such risks and rewards.
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> 66. Lease classification is made at the inception date and is reassessed only if there is a lease modification. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the underlying asset), or changes in circumstances (for example, default by the lessee), do not give rise to a new classification of a lease for accounting purposes. Finance leases Recognition and measurement.
>
> 67. At the commencement date, a lessor shall recognise assets held under a finance lease in its balance sheet and present them as a receivable at an amount equal to the net investment in the lease."

3.3 The learned counsel further submits that though the adjudicating authroity relied on the jdugemnts of the Hon'ble Supreme Court in the matter of **Association of leasing and Financial Services Companies: 2010 (20) STR 417 (SC),** the said judgment was also referred in appellant's own case **(Praxair India Ltd. Vs. Commissioner of Central Excise and Service Tax, Bangalore-I: 2018 SCC OnLine CESTAT 10473)**by this Tribunal. He also submits that the decision of this Tribunal on the very same issue has attained finality and it is squarely covered in present dispute also. The Tribunal in the said decision held that:

> "5.1.4 On going through the agreement, for establishment of VPSA based oxygen plant between M/s. Usha Beltron Ltd. (M/s. UML) and the appellants, we find at para 1.7 that subject to other provisions of this agreement, title to all oxygen plant equipment will remain vested in Praxair. Praxair shall remain at all times the sole and absolute owner thereof and no right, ownership, title or interest therein (save and accept for the lease hold rights aforesaid) shall pass to USAD. Praxair shall be entitled to

> put its name plates or markings on any part of the oxygen plant or oxygen plant equipment indicating Praxair's title and interest therein. USAD shall at no time contest or challenge Praxair's sole and exclusive ownership of the oxygen plant equipment or any part thereof.
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> 5.1.5 Going by the above and the differentiation brought in by the decisions of various judgments of the Tribunal, we are inclined to hold that the appellant's case is that of a equipment lease rather than financial lease. We find that the Tribunal has decided the case in favour of the appellants. Therefore, we find that the demands raised against the appellants for leasing the oxygen plant equipment are not sustainable in law."

4. Learned Authorised Representative (AR) for the Revenue reiterating the findings in the impugned order and also drew our attention to the Agreement Condition No.2.4 where it is clearly stated that *".....SWIL shall at no time contest or challenge Praxair's sole and exclusive ownership of the Oxygen Plant Equipment or any part thereof, unless cost of plant is paid up-front by SWIL."* Only after considering such conditions in the agreement, the adjudicating authority held that activities carried out by the appellant squarely falls under the category of 'Banking and Other Financial Services' and confirmed the demand. Learned AR also drew our attention to the judgment of the Hon'ble Supreme Court in the case of **Association of Leasing & Financial Service Companies vs. UOI and Ors.: 2010-TIOL-87 SC-ST-LB**.

5. Heard both sides. We have gone through the conditions of the Agreement and also the finding of this Tribunal in appellant's own case **Praxiar India Ltd. Vs. CCE: 2018 SCCOnLine CESTAT 10473** and there is no condition incorporated in the agreement to suggest that the conditions No.3 and 4 as defined under Financial leasing is applicable in the present case and in

the absence of such conditions, the activity of leasing the oxygen plant equipment carried out by the appellant cannot be considered as financial leasing service. Accoringly, the appeal is allowed.

(Order was pronounced in Open Court on 06.06.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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