

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 40751 of 2016

(Arising out of Order-in-Appeal No.79/2016 (CXA-II) dated 29.02.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

Shri R. Govindan

Proprietor, Pasupathy Earthmovers
11, Patthar Street,
Thondamanaththam PO,
Puducherry 605 502.

... Appellant

VERSUS

**The Commissioner of GST &
Central Excise,**

Puducherry GST Commissionerate,
No.1, Goubert Avenue, Beach Road,
Puducherry 605 001.

... Respondent

APPEARANCE :

Shri V. Ravindran, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative
for the Respondent

CORAM :

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.41393/2025

DATE OF HEARING : 02.07.2025

DATE OF DECISION : 27.11.2025

Per: Shri P. Dinesha

Brief and relevant facts are that the Appellant was engaged in the business of supply of Earthmoving Equipment and had supplied JCBs / Tippers to various companies, but had not paid service tax, since the perusal of the bill books/note books of the Appellant did not reveal the amount of consideration, the major service recipients were approached and based on verification of their books of accounts, it appeared that the Appellant was liable to pay a service tax amount of Rs.14,85,225/- for the period from April 2008 to June 2001. This resulted in the issuance of Show Cause Notice dt. 04.10.2013 proposing to demand the aforesaid service tax amount and after due process, the Adjudicating Authority vide the Order-in-Original No.119/2014-ST dated 03.11.2014 confirmed the amount of Rs.12,28,506/- after allowing cum-tax benefit . He also imposed penalties under Sections 77 & 78 of the Finance Act, 1994. Aggrieved by the above demands, the Assessee filed an Appeal before First Appellate Authority rejected the Appeal vide impugned Order-in-Appeal No. 79/2016 (CXA-II) dated 29.02.2016 and hence, the present Appeal has been filed before this forum.

2. Heard Shri V. Ravindran, Ld. Advocate for the Appellant and Shri N. Satyanarayana, Ld. Assistant Commissioner for the Respondent, perused the documents placed on record and the judicial precedents filed during the course of hearing.

3.1 It is the case of the Appellant that in the first place, the very fact that the Show Cause Notice itself asserts that it is based only on the statement of Account of the Appellant's bank account and no other corroborative evidence, issued merely on assumptions and presumptions and the impugned order following such notice without any evidence, ignoring the evidences filed with letters dated 07.07.2011 and 28.07.2011, is not only erroneous but also against facts.

3.2 This apart, the Department did not provide any additional time and passed the impugned order, the SCN having recognized the Bill and other records of the Appellant (as obtained through Appellant's letters dated 07.07.2011 and 28.07.2011 ought to have segregated the income i.e. the credits in the Bank statements, according to the nature of transaction viz. (i) sale proceeds on account of Sand/brick sales, (ii) credit on account of maturity of LIC Policy (iii) Cash remittance of Rs.23,400/- on 14.10.2009 deposited by the Appellant on sale of bricks (iv) the consideration received for hiring of JCB, which invariably were received through cheques, so as to arrive at the gross amount on

which service tax was payable (if at all) by the Appellant during the period of dispute.

3.3 Show Cause notice was entirely barred by limitation of one year prescribed. Therefore from the date of notice viz. 04.10.2013, the entire demand is barred by limitation in the present case.

3.4 It was contended by the Ld. Advocate that the JCB hired by Appellant bore the Registration No.TN-32D 4941, in the year 2009-10, he had taken one more JCB of his friend on sub-lease and this JCB bore Registration No.TN 32 F 0709, which was hired out to M/s.URC Construction (P) Ltd., one of the major customers of the Appellant, the hire charges received for this JCB ought to have been excluded from the gross amount of the Appellant, as the said hire charges were passed on to the actual owner of JCB TN 32F 0709.

3.5 Further, the Appellant filed a comprehensive statement (consolidation of Work Sheets 1 to 4) with supporting Bills for each receipt to substantiate that the gross hire charges for JCB hired for a total of only 6515.45 hours, during the period of dispute, and collected Rs.31,57,371/- for the material period.

3.6 The Appellant was under bonafide belief that he was not required to pay any service tax, including for the year 2009-10. Without prejudice to the above, it is submitted that it is on record

that the Appellant had not claimed any service tax from any of his clients for the hiring of JCB and therefore the service tax should have been calculated on cum-tax basis, which has not been extended. Similarly, the hire charges of Rs.500/- per hour included the cost of Diesel used in the JCB, for which no abatement in value was given. He prayed for deletion of penalty imposed as well. He also relied on the following decisions :

- (i) **Padmini Products Ltd. Vs CCE**
1998 (43) ELT 195 (SC)
- (ii) **Uniworth Textiles Vs CCE**
2013 (288) ELT 161 (SC)
- (iii) **Sai Infraa Equipments Pvt. Ltd. & Sai Concrete Equipment Vs CCE Salem** - 2024 (10) TMI 1669 CESTAT CHENNAI.
- (iv) **Tushar Transport Vs CGST & CE Bokarao**
2023 (9) TMI 927 -CESTAT KOLKATA
- (v) **Universal Distributors Vs CCE & ST Vadodara**
- 2023 (10) TMI 1382-CESTAT AHMEDABAD.
- (vi) **CCE Vs Chartered Logistics Ltd** – (2024) 16 Centax 473 (Tri.-Ahmd.). This view is affirmed by Supreme Court as reported in 2024 (16) Centax 474 (SC).

4. *Per contra*, Ld. A. R Shri N. Satyanarayana relied on the findings of the Lower Authority.

5. We have considered the rival contentions and we have meticulously considered the documents placed on record before us including case laws. After hearing both sides, the following issues arise for our consideration :

(i) whether the extended period of limitation has been justifiably invoked?

(ii) whether the impugned demand made under the "Supply of Tangible Goods Service" is correct ?

6. From a perusal of both the OIO & OIA, we find that the authorities have rather considered the receipt of charges, Bank statements etc., but facts have not been verified in the context of requirements of 'Supply of Tangible Goods'. What is relevant is the 'Transfer of Right to use" and mere finding as to "lending" will not suffice, to hold the liability under the category of "Supply of Tangible Goods Service". The same has to be ascertained from the understanding between the parties as forthcoming from a written or a verbal understanding.

7. Even in the Order-in-Original, the Adjudicating Authority has held from the documents placed before him and after verifying with some of the service recipients that they have indicated that they had engaged contractors for civil and other purposes with requirement for earth moving equipment who in turn might have rented out the said equipment and that they

might have made payments directly to such contractors, the details of which they were not in a position to provide. In fact, in one of the contractor's case viz. M/s.Mertho Constructions the Adjudicating officer has recorded that the Appellant had rented out JCB and Tippers to them. These facts at the most indicate the 'lending' *per se* but the same would not concretely establish the control of the Appellant over the said equipment.

8. In a similar factual position, the co-ordinate Kolkatta Bench had considered an identical issue in the case of **Tushar Transport Vs CGST & CE Bokarao** (*supra*); the relevant observations of the Bench is that the bills submitted by the Appellant therein indicated that they had raised monthly bills for hire charges for trucks, the order impugned therein concluded that in those bills the Appellant charged rent on the tangible goods viz. JCB & Trucks on the basis of number of days of hire, prior to 01.07.2012 such supplies were liable to service tax under the category of 'Supply of Tangible Goods' as defined under Section 65 (105) (zzzzj) of the Finance Act, 1994. With effect from 01.07.2012, the transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods has been declared as 'deemed service'; accordingly, the order impugned therein had justified the demand of service tax by treating the entire amount shown in their AS-26

Statements as amount received towards rendering of taxable service. In this context, the finding of the co-ordinate Bench are as under :

“14. We observe that prior to 01.07.2012, in order to classify a service under the category of 'supply of tangible goods service' there must not be any transfer of right of possession of the goods from the service provider to the service recipient. Also, there must not be any transfer of effective control of the goods from the service provider to the service recipient. With effect from 01.07.2012, the transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods has been declared as 'deemed service'. From the records we observe that no effort has been made by the department to ascertain whether the right to use the JCBs and Trucks have been transferred to the customers or retained by the Appellant. Without such ascertainment, it would not be possible to conclude whether the service would fall within the ambit of 'deemed service' or not.

... ..

16. The Appellant relied on the decision of the Tribunal in the matter of Kush Constructions Vs. CGST NACIN reported in 2019 (24) G.S.T.L. 606 (Tri.-All.) and contended that the liability of service tax cannot be determined merely on the basis of Income Tax Returns / Form 26AS. The Appellant also relied on the decision of the Tribunal in the case of M/s Luit Developers Private Limited Vs. Commissioner of CGST & Central Excise, Dibrugarh, wherein this Tribunal has

held similar view that the demand cannot be based on AS26 statement received from Income Tax department, without any corroborative evidence.

17. From the decisions cited above, we observe that the demands confirmed merely on the basis of the data available in the Income Tax Returns/AS26 Statements is not sustainable. It must be established that the amount shown in the AS26 statements are actually received in connection with taxable service rendered by the Appellant. As the department has not brought in any positive evidence to substantiate the allegation that the amounts received are towards rendering of taxable service liable for service tax, we hold that the demand confirmed in the impugned order is not sustainable.”

9. This apart, we also find that in the case of **Sai Infraa Equipments Pvt. Ltd. & Sai Concrete Equipment Vs CCE Salem** (*supra*) even the Chennai Bench of the Tribunal under similar circumstances has held that no service tax could be levied on the hiring of JCB.

10. We also find that the Appellant has also taken a ground with regard to the demand of service tax by invoking the extended period of limitation, the period involved is May 2008 to June 2011 for which the SCN dt. 04.10.2013 came to be issued by invoking the extended period of limitation. The only allegation in the SCN is non-obtaining of service tax registration

and non-disclosure of receipts / income either by filing ST-3 returns or in other manner, amounted to suppression of fact. In fact in the case of **Uniworth Textiles Vs CCE** (*supra*), the Hon'ble Supreme Court while examining the invocation of extended period of limitation has held that the burden was on the Department to establish the *malafides* of the notice, the relevant paragraphs read as under :

“24. Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of *bona fide* conduct, by observing that “the appellants had not brought anything on record” to prove their claim of *bona fide* conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of *mala fide* lies on the shoulders of the one alleging it. This Court observed in *Union of India v. Ashok Kumar & Ors.* - (2005) 8 SCC 760 that “it cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility.”

... ..

26. Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a

mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.”

11. In view of the above, we are of the view that the impugned order cannot sustain either on merit or on limitation consequently, we set aside the same and allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 27.11.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)