

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

Service Tax Appeal No. 40656 of 2017

(Arising out of Order in Original No. CHN-SVTAX-001-49-50-2016-2017 dated 26.10.2016 passed by the Principal Commissioner of Service Tax, Chennai)

Caravel Logistics Pvt. Ltd.

484, Pantheon Plaza
Pantheon Road, Egmore
Chennai – 600 008

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

APPEARANCE:

Shri Karthik Sundaram, Advocate for the Appellant
Shri Anoop Singh, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO.41409/2025

Date of Hearing: 25.11.2025
Date of Decision: 02.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. CHN-SVTAX-001-49-50-2016-2017 dated 26.10.2016 passed by the Principal Commissioner of Service Tax, Chennai (impugned order).

2. The appellant provides various services, including Custom House Agent and Transport of Goods for which they are registered with the Service Tax department. They leased containers from foreign companies for import and export cargo transport and paid rent in foreign currency. As it appeared that they did not have possession or control of the containers, the Service Tax authorities determined that

the appellant was liable to pay Service Tax under 'Supply of Tangible Goods' on a reverse charge basis. Show Cause Notices (**SCN**) 278/2013 and 214/2014 dated 01.09.2014 and Statements of Demand (**SOD**) 113/2014 dated 09.05.2014 were issued and adjudicated by the Commissioner of service tax vide Order-in-Original (**OIO**) No. 08, 09 & 10 dated 02.01.2015. The current proceedings pertain to SOD No 58/2015 dated 20.04.2015 pertaining to Service Tax demand for the period from April 2013 to September 2014 and SOD No 101/2015 dated 20.08.2015 pertaining to the period October 2014 to March 2015. After following due process, the Principal Commissioner of Service Tax, Chennai, upheld these demands with interest and penalties, leading to the current appeal.

3. The learned Advocate Shri Karthik Sundaram appeared for the appellant and Ld. Authorized Representative Shri Anoop Singh appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted that OIO No. 8, 9 and 10/2014-15, dated 02.01.2015, which was the subject matter of an appeal filed by the appellant before this Tribunal in Appeal No. ST/40792/2015 has been decided in favour of the appellant vide Final Order 40844/2024 dated 11.07.2024. As the SODs in the present dispute are in continuation of the earlier SCN and SOD, Tribunal's Final Order No. 40844/2024 which is in favour of the appellant, should be equally applied to the present case. To the best of the knowledge of the appellant, no appeal has been filed against the order dated 11.07.2024. Hence the impugned Order may be set aside and their appeal allowed.

3.2 Ld. Authorized Representative Shri Anoop Singh appeared for the respondent. He reiterated the findings in the impugned order.

4. We have heard the rival parties and gone through the appeals. We find that this Tribunal in its Final Order 40844/2024 dated 11.07.2024 has examined the issue in detail. The relevant portion is extracted below:-

5. The issue that arises for consideration is:-

i. whether the lease rentals paid by the appellant to the foreign company (Lessor) for hiring the containers is subject to levy of service tax under Supply of Tangible Goods Services under Section 65(105)(zzzzj) of the Finance Act, 1994 upto 30.06.2012.

ii. Whether the activity would fall under definition of Service as per Section 65B(44) for the period w.e.f. 01.07.2012.

***** ***** *****

7. Our endeavour would be to analyse the Agreement as to whether the above attributes are present in the transaction. In the present case, the containers are delivered to the appellant by the lessor. The Ld. Authorised Representative appearing for the Department has argued that since the containers have to be taken delivery from the location as instructed from the lessor, it cannot be said that there is a transfer of possession of goods. The said argument does not find favour with us. When the containers are delivered to the appellant it constitutes transfer of possession of the goods by the lessor.

8. In the present case, there is meeting of minds (*consensus ad idem*) with regard to the identity of the goods as each container has identification number. The lessor and the lessee had agreed to lease a specific container / containers. The second test is also satisfied.

9. In the present case, the container is used by the appellant for transportation of cargo. It is for the appellant to take necessary Licenses from the Customs Authorities and also to register the container before the Customs. The appellant has legal right to use the container and has all permissions / licenses in their name for compliance with customs formalities as well as courier formalities. The

agreement stipulates that hazardous goods should not be transported. This condition has been interpreted by the Department to hold that the lessor is allowed to decide what type of cargo is to be transported. This view is erroneous. The said condition is to maintain the safety of the container by the owner of the container. Since it is not outright sale and only deemed sale, the title still remains with the owner. Another condition pointed out by the Ld. Authorised Representative is that the container is to be used for international transportation. The Ld. Counsel has explained that the rules for coastal running of the vessel is different and only if the vessel is for international transportation, the appellant would be able to get necessary licence / permissions from Customs and other authorities. We find this explanation to be reasonable. We do not find any condition in the agreement allowing the lessor to decide the transportation of cargo.

10. The use of the container during period on lease is to be to the exclusion of the lessor. The appellant has full right to use the container during the lease period which is clear from Para 8 reads as under:-

"8. EXCLUSION OF WARRANTIES

ALL CONTAINERS ARE LEASED AS IS, AND LESSOR WARRANTS ONLY THAT THEY CORRESPOND WITH THE DESCRIPTION SET OUT IN THE SCHEDULE, AND THAT SO LONG AS NO EVENT OF DEFAULT HAS OCCURRED LESSEE SHALL HAVE QUIET POSSESSION AS AGAINST ANY PERSON CLAIMING UNDER OR THROUGH LESSOR, SAVE AS AFORESAID, NO CONDITION OR WARRANTY WHATSOEVER OF ANY KIND HAS BEEN OR IS GIVEN BY LESSOR IN RELATION TO THE CONTAINERS, AND ALL CONDITIONS AND WARRANTIES IN RELATION THERETO, WHETHER EXPRESSED OR IMPLIED, WHETHER STATUTORY, COLLATERAL HERETO OR OTHERWISE, WHETHER IN RELATION DO THE FITNESS OF THE CONTAINERS OR ANY ITEM THEREOF FOR ANY PARTICULAR PURPOSE, OR IN COMPLIANCE WITH ANY CONVENTION, STATUTE, REGULATION, ORDER OR OTHER PROVISION OF LAW OR STANDARD, OR WHETHER IN RELATION TO MERCHANTABILITY OR AS TO DESCRIPTION, STATE, QUALITY OR CONDITION OF THE CONTAINERS OR ANY TEM THEREOF AT DELIVERY OR AT ANY OTHER TIME, ARB HEREBY EXCLUDED AND EXTINGUISHED."

(emphasis supplied)

11. It is stated that the lessee (appellant) shall have quiet possession as against any person claiming under or through

lessor. This establishes that the appellant has right to use the containers to the exclusion of the lessor. The fourth test is satisfied.

12. During the lease period, the goods can be used only by the appellant and the lessor cannot transfer the rights to any other person. On perusal of the agreement, it is seen that the lessor does not reserve any right to transfer the right to use to others, during the lease period. The fifth test is satisfied.

13. From the above, we find that the five-fold test put forward in the *BSNL [Bharath Sanchar Nigam Ltd. Vs Union of India - 2006 (3) VST 95]*, case stands satisfied. There is indeed transfer of possession as well as effective control of the containers to the appellant by the foreign supplier. **In such circumstances, the activity cannot fall under Supply of Tangible Goods Services as defined under Section 65(105)(zzzzj). As the above five-fold test for transfer of right to use the goods being satisfied, the transaction has to be construed as a deemed sale. It cannot be a 'Service' as defined under 65B(44) of the Finance Act, 1994.**

14. Our view is supported by the decision of the Tribunal in the case of *Lindstrom Services (P) Ltd. (supra)*. In the case of *Taneja Aerospace and Aviation Ltd. Vs. Commissioner of GST and Central Excise [2024 (17) CENTAX 335 (Tri. Mad.)]*, a similar issue was considered. It was held that the transaction of leasing of an aircraft from entity abroad does not fall under Supply of Tangible Goods Service as the aircraft is taken as lease agreement along with entire crew of aircraft by assessee.

***** ***** *****

17. The Department has relied on the decision rendered in the case of *Adani Gas Ltd. [Commissioner of Service Tax, Ahmedabad Vs Adani Gas Ltd. - Civil Appeal No. 2633 of 2020, dated 28.08.2020]*. In the case of *Adani Gas Ltd.*, the Hon'ble Apex Court found that the fourth clause is not satisfied. The use of SKID was not to the exclusion of the assessee. The facts of this case being different as discussed above, the said case is distinguishable.

18. **On appreciation of facts and following the decisions above, we are of the considered opinion that as there is a transfer of possession and effective control of the goods, and the activity being transfer of right to use goods, the demand of service tax cannot sustain for the period upto 30.06.2012 and post 01.07.2012 also.**

The Bench opined that the activity involving the appellant cannot fall under Supply of Tangible Goods Services as defined under Section 65(105)(zzzzj) of the Finance Act, 1994 and hence the demand of Service Tax cannot sustain

5. Judicial discipline obliges us to follow previous Coordinate Bench judgments unless the facts differ or a higher court has altered the decision. No such happening has been brought to our notice. The Hon'ble Supreme court in its recent judgment in the case of **SK. MD. ANISUR RAHAMAN Vs THE STATE OF WEST BENGAL & ANR.**

[2025 INSC 1360 / CRIMINAL APPEAL NO.43/2025, Dated: 26.11.2025.], held:

"47. Though elementary, it requires restatement that it is fundamental to the rule of law to maintain the sanctity and finality of judicial verdicts. Judicial orders which determine issues arising between the parties to the lis bind them and its conclusive nature ensures resolution of disputes so that justice is served. The strength of judicial power lies less in the hope of perfection and more in the confidence that decisions, once made, are settled. . . ."

6. We hence set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 02.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex