

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

REGIONAL BENCH - COURT No. I

Service tax Appeal No.41925 of 2016

(Arising out of Order-in-Original No.10/Commr/ST/2016 dated 13.07.2016 passed by Commissioner of Central Excise, Tirunelveli)

M/s. Alex Bharat Raja,

M/s.Friends Road Carriers,
9/245-A, Fathima Street,
Kavalkinaru Junction,
Tirunelveli-627 105.

.... Appellant

VERSUS

Commissioner of GST & Central Excise

Central Revenue Building, N.G.O. Colony,
Tirunelveli-627 007.

... Respondent

APPEARANCE :

Shri M. Karthikeyan, Advocate for the Appellant
Ms. G. Krupa, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40658 / 2026

DATE OF HEARING : 13.02.2026
DATE OF DECISION : 29.05.2026

Per: Shri Ajayan T.V.

Alex Bharat Raja, the appellant herein, has assailed the Order-in-Original No. 10/Commr/ST/2016 dated 13.07.2016 (impugned order).

2. The relevant facts as emanating from the SCN are that, the appellant is a holder of service tax registration certificate for providing taxable services under the category of "supply of tangible goods service" and "transportation of goods by road service". The appellant is also engaged in providing "Erection, Commissioning or installation service". Acting on intelligence that the appellant had provided taxable services and received payments but had not discharged service tax thereon, the

officers of the Department initiated an enquiry by way of issuing letters/summons. In response to the enquiry, the appellant provided copies of financial records, such as Form 26AS statements, IT return acknowledgements, along with Profit and Loss Account and Balance Sheet, as well as sample copies of agreements/ work orders, service tax paid invoices, etc. In the course of such enquiry, a statement was also recorded from the appellant wherein he has stated that he is providing "Transport of goods by road" and "Supply of tangible goods" services and provided a list of his service receivers. The appellant has deposed that he had collected service tax from his service receivers in respect of supply of tangible goods services but not in respect of transport of good services. He has also deposed that due to shortage of funds he had not paid the service tax in full and further the service receivers had also not paid the amounts due to him in time and that he had filed the ST-3 returns only for the year 2012-13. On perusal of the records produced by the appellant, the Department was of the view that the appellant has provided taxable services under the categories "Supply of Tangible Goods Services" (SOTGS), and "Erection, Commissioning or Installation Services" (ECIS) for the period from 2009-10, (October 2009 to March 2010), to 2013-2014. Though it was noticed that the appellant has obtained Service tax registration under the category of "Transportation of goods by road service", the Department was of the view that the transportation of cranes etc. is only part of the main services provided by the appellant and the same does not merit separate classification. Further, it appeared that no consignment note has been issued by the appellant mentioning freight charges and hence the service provided by the appellant fell under supply of tangible goods service. Alleging thus, the Department issued an SCN dated 20.04.2015 working out the tax liability on the basis of the Form 26AS statements and the Profit and Loss accounts that were produced. The notice invoked extended period of limitation on the allegation that the appellant had willfully suppressed the facts of providing taxable services and also had not filed ST-3 returns and had the taxable transactions been not brought to light by accessing third party data, the Department would have lost substantial revenue. Proposals were made to impose penalties and also for appropriation of an amount of Rs.14,35,301/- paid by the appellant. After due process of law, the Adjudicating Authority confirmed the

demand of Service tax along with applicable interest, appropriated the aforesaid amount paid towards the service tax liability and imposed an equivalent penalty under Section 78 as well as a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994. Aggrieved, the appellant has preferred this appeal.

3. Shri M. Karthikeyan, Ld. Advocate appearing for the appellant contended that the appellant is the proprietor of M/s. Friends Road Carriers and is registered since 22.01.2009 with the Department. The appellant's business is to transport the heavy machineries like cranes and its accessories etc. by road using the trailers owned by him as well as that taken on hire from other persons. Ld. Counsel contended that during the period of dispute, the appellant provided his services to 16 companies, out of which one company, namely Gamesa Wind Turbines Pvt. Ltd., availed erection commissioning and installation services from the appellant apart from the service of transportation of goods. It is argued that the appellant classified its activity of transporting heavy machines and their accessories by road under the category of Goods Transport Agency Service (GTA) as under section 65(50b) for the period prior to 01.07.2012 and under section 66B for the period post 01.7.2012. It is further contended that the liability to discharge Service tax on GTA services was always on the recipient of service by virtue of Sl. No. A (iv) of Notification No. 36/2004-ST dated 31.12.2004 for the period prior to 01.7.2012 and under Sl. No. I(A)(ii) of Notification No.30/2012-ST dated 20.06.2012 for the period post 01.07.2012.
4. Ld. Counsel further submits that with respect to ECIS the liability to pay service tax was on the appellant and accordingly, he raised invoices with Service tax. However, since Gamesa Wind Turbine Pvt Ltd did not make full payment of the invoice value to the appellant, he discharged tax to the extent of amounts received. Ld. Counsel further submits that consequent to enquiry and investigation, the Department was of the view that the transportation of cranes using trailers by the appellant, is not a GTA Service, but a service of supply of tangible goods for use. The Department has also alleged that with respect to ECIS, the appellant has collected tax and has not deposited with the Government.

5. Ld. Counsel further contended that the impugned order holds that the appellant has provided SOTGS for the reasons that there is no transfer of possession and effective control of the trailers used to transport the cranes and the consideration is a lump sum amount in the form of 'hire charges' and not 'freight charges'. Ld. Counsel contended that from the SCN and the impugned order, it is clear that the issue involved in the present case is that of classification of service, which is solely based on interpretation of law. It is trite law that when the issue involved is that of interpretation of law, invocation of larger period of limitation is not sustainable. It is contended that therefore the demand for the period October 2009 to March 2013 is beyond the normal period of limitation, and is therefore not sustainable. Reliance is placed on the decision in ***International Merchandising Company, LLC, 2022 (12) TMI 556-Supreme Court, Shakthi Tech Manufacturing India Pvt. Ltd., 2025 (1) TMI 219-Cestat Chennai*** and ***Namakkal South India Transports, 2025 (6) TMI 1176- Cestat Chennai***.
6. Ld. Counsel further contended that the demand for the period 2013-14 pertains to the negative list period when there is no classification of service. Therefore, the findings of the respondent in paragraph 8.1.2, 8.1.3 and 8.2 of the impugned order are not applicable. Drawing attention to the definition of the taxable service of supply of tangible goods for use in Section 65(105)(zzzzj) for the period prior 01.07.2012 and 'declared service' under Section 66E (f) with effect from 01.07.2012, Ld. Counsel contended that the language of Section 66E(f) mandates that the 'right to use' the goods should not have been transferred. It is argued that the respondent had not spelt a single word regarding the 'right to use'. Reliance is placed on the decision in ***Tushar Transport-2023 (9) TMI-927-Cestat Kolkata*** and ***Shri R. Govindan -2025 (12) TMI 9-Cestat Chennai*** and it is argued that without such ascertainment the adjudicator could not have found the services to be SOTGS and therefore the demand for the period pertaining to negative list period is covered by the said decisions and is liable to be set aside.
7. Ld. Counsel further argues that the appellant's classification of its service under GTA service has been rejected on the grounds that the

appellant did not issue consignment notes and that the consideration is recorded as 'hire charges' and not 'freight charges'. Drawing attention to the definition of GTA under Section 65(50b) and rule 4B of the Service tax rules, 1994 dealing with issuance of consignment note, it is argued that any document which contains the details mentioned in the explanation to Rule 4B can be called a consignment note. Ld. Counsel therefore argued that the appellant in his reply has clearly stated that they have issued invoices/bills to their customers mentioning all the requisite details. However, the respondent has not recorded any findings with respect to the same. Reliance was placed on the decision in ***Indiana Earth Movers, 2025 (9) TMI 194-Cestat Chennai***, wherein though the assessee had not issued consignment note it was held that the service has to be treated as GTA service as the assessee therein had collected freight charges. Ld. counsel further argues with respect to the finding on consideration being 'hire charges' and not 'freight charges', that the appellant's customers have used the term 'transportation charges' in some of the work orders. It is further argued that the respondent has recorded this finding merely based on the terminology used in the balance sheet without considering the actual nature of the service provided by them. Reliance was placed on the decision in **Shri R. Govindan** (supra) to contend that the rejection of the appellant's classification of service under the head GTA is not sustainable.

8. Ld. counsel further argues that as regards the non-payment of tax in respect of Erection Commissioning and Installation Services on account of non-receipt of the entire consideration from the recipient, in terms of Rule 6 of the Service tax rules 1994, Service tax up to 01.04.2011 was required to be paid on receipt basis and with effect from 01.04.2011, the said Rule 6 was amended to the effect that tax is required to be paid on accrual basis. However, Rule 9 of the Point of Taxation Rules states that where the service is provided or bill is raised on or before 31.03.2011, the service tax payment shall be on receipt basis only. It is argued that the entire demand on ECIS has been quantified on the basis of amounts declared in the financial statements for the financial year 2010-11 and 2011-12, which do not reflect the actual receipts, and therefore, in view of the above contentions, the demand for the period 2010-11 is liable to be set aside. It was also argued that in respect of

the bills raised by the appellant on Gamesa Wind Turbines Pvt. Ltd. for ECIS contain the details of service charges and service tax payable separately. It was contended that while making payments to the appellant, Gamesa Wind Turbines Pvt. Ltd. used to deduct 1% of the total amount i.e., service charges plus service tax payable to the appellant and remit the same into the appellant's income tax TDS account. Therefore, since the Adjudicating Authority took the amount reflected in the appellant's TDS account for quantification, the appellant has treated the taxable value arrived at by the Adjudicating Authority as cum-tax value and after adjusting the Cenvat Credit available, the appellant has paid his Service tax due. As regards rejection of the appellant's claim for Cenvat Credit by the Adjudicating Authority on the ground that in terms of Rule 4(1) of Cenvat Credit Rules 2004, the output service provider shall not take credit on the input service invoice after the period of 6 months/1 year and that the credit was claimed by the appellant in 2014, based on the invoices raised on them during the years 2009-10 to 2013-14; it is submitted that the limitation prescribed under Rule 4(1) of the CCR, Rules 2004 was introduced by way of an amendment only in 2014 and applies only for the invoices issued after the amendment i.e. prospectively and said limitation cannot be applied retrospectively. Reliance is placed on the decisions in ***EM Services (I) Pvt. Ltd., 2018 TMI 1066-Cestat, Mumbai, Amba River Coke Ltd., 2026 (2) TMI 515-Cestat, Mumbai.*** It is prayed that the impugned order may be set aside.

9. Ms. G. Krupa, Ld. Authorized Representative appearing for the respondent reiterated the findings in the impugned order. Ld. A.R. points out that the Adjudicating Authority has studied the scope of the work orders under which the services were provided by the service provider and has discussed one such work order after reproducing the same in the Order in Original and has found that the right of possession and effective control is with the service provider and the same has not been transferred to the service receiver at any point in time and hence the services are rightly classifiable under supply of tangible good services. Ld. A.R. further argues that the contention of the appellant that it was rendering goods transport agency service is incorrect as the Adjudicating Authority has examined the statutory provisions of Section

65(50b) and Rule 4B of the Service Tax Rules, 1994 and has found that the appellant has not issued consignment note and was in fact receiving hire charges and not freight/transportation charges. In this regard she draws attention to the reliance placed by the Ld. Adjudicating authority on the decision in ***Birla Rady Mix v CCE, Noida, 2012 (12) TMI 736-CESTAT, New Delhi***. Ld. A.R further argues that since the appellant's activities continued to be the same after 01.07.2012, even as per the provisions post 01.07.2012 the Ld. Adjudicating Authority has held the services of the appellant to be covered under the declared services as per Section 65B (44) read with Section 66E (f) of the Finance Act, 1994. Ld. A.R. also points out that since the findings of having rendered Erection, Commissioning and Installation service stood conceded, the demand on this count is to be upheld. It is also argued by the Ld. A.R. that the appellant was well aware of his responsibilities as a service provider as the appellant had contended in its reply that they were registered under SOTGS as well as goods transport agency service and deliberately having not filed ST-3 returns despite knowing their liability to pay service tax the extended period of limitation has been rightly invoked. Ld. A.R. placed reliance on the decisions in ***K.P. Mozika vs ONGC Ltd., 2024(388) ELT 11 (SC), Commr. Of ST, Ahmedabad vs Adani Gas Ltd., 2020 (40) GSTL 145 (SC), Aban Loyd Chiles Offshore Ltd. vs State of TN, 2024 (5) TMI 570-Madras High Court*** and ***Birla Ready Mix vs CCE, Noida, 2012 (12) TMI 736-Cestat, New Delhi***.

10. We have heard the rival submissions and perused the materials on record.
11. The issues that arise for our determination are:
 - A) Whether the findings in the impugned order that the appellant was rendering services under the category "Supply of Tangible Goods Service" and under "Erection, Commissioning and Installation Services" is tenable?
 - B) Whether the consequent demand of service tax invoking the extended period of limitation is tenable?

12. We find it apposite that in order to address the above issues, it is imperative to delve into the statutory provisions as well as the existing jurisprudence as developed by the Honourable Apex Court, while dealing with these statutory provisions and what has been laid down as the essential requirements to come within their ambit.

Before 01-07-2012

The definition of Supply of Tangible Goods Service as provided in Section 65 (105) is as under:

105) "Taxable service" means any service provided or to be provided –

(a) xx xx

(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;"

After 01-07-2012

Section 65B(44) of the Finance Act, which was inserted w.e.f. 01.07.2012 defines 'service' to mean :

"**65B(44)** "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –

(a) an activity which constitutes merely, -

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim"

Section 66E(f) of the Finance Act was also inserted with effect from 01.07.2012 and sub-section (f) of Section 66E is as follows :

"**66E.** The following shall constitute declared services, namely:-

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner **without transfer of right to use such goods;**"

13. With the 46th amendment to the Constitution and introduction of Article 366(29A)(d), transfer of the right to use goods is 'deemed sale', falling within the purview of the legislative field of a State to tax 'deemed sale', as sale. What would constitute a transaction of the transfer of right to use goods was stated in the decision of ***Bharat Sanchar Nigam Ltd v. Union of India, 2006 (2) STR 161 (SC)*** by the Honourable Supreme Court, in the course of deciding the question of the nature of the transaction by which mobile phone connections are enjoyed, whether is it a sale or is it a service or is it both? The Hon'ble Apex Court has, inter-alia, dwelling on Article 366(29A), the legislative competence of the state to levy sales tax under Entry 54 List II of the Seventh Schedule and the powers of Central Government to levy service tax under Entry 97 of List I, and as regards clause (d) of Article 366(29A), "*a tax on 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*", elaborated upon a transaction of the transfer of right to use goods, as under:

"70. In our opinion, the essence of the right under Article 366(29A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods, would not arise."

14. The attributes of what a transaction should have in order to constitute a transaction for the transfer of right to use the goods has been spelt out in the concurring Judgement of A. R. Lakshmanan, J, in the Judgement of the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd v. UOI, 2006 (2) STR 161 (SC)***, as under:

91. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:

- 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 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 rights to others.

15. The Legislature has thus consciously kept transactions involving "transfer of the right of possession and effective control of tangible goods", outside the purview of service tax, in the aforesaid definition of supply of tangible goods under Section 65 (105)(zzzzj). This exclusion has been carried forth even after 01-07-2012, in as much as Section 66E that provides what constitutes declared services has at clause (f) stipulated that "transfer of goods by way of hiring, leasing, licensing or in any such manner *without transfer of right to use such goods*", thereby unambiguously conveying that transferring right of possession and effective control of tangible goods is outside the purview of the taxable service, consistent with the constitutional limitations by which Parliament is proscribed.

16. At this juncture it would be apposite to refer to the decision of the Hon'ble Supreme Court in ***Commissioner of Service Tax, Ahmedabad v Adani Gas Ltd, 2020 (40) G.S.T.L 145 (S.C)***, wherein, a three-judge bench of the Apex Court has extensively dwelt on the scope of Section 65 (105) (zzzzj). The respondent therein was in the business of distributing natural gas-Compressed Natural Gas (CNG) and Piped Natural Gas (PNG). In order to facilitate the distribution of PNG to industrial, commercial and domestic consumers through pipes, the respondent installs an equipment described as "SKID" at their customer's sites which regulates the supply of PNG being distributed and records the quantity of PNG consumed by the customer, which is then used for billing purposes. The respondent enters into an agreement-the Gas Sales Agreement (GSA) with consumers to whom gas is supplied by it. A notice was issued demanding service tax on the charges recovered for supplying the measurement equipment under the category of "supply of tangible goods services" under Section 65 (105)

(zzzzj). The Adjudicating Authority confirmed the demand holding that the expression 'use' is attracted and it is the customer who must be held to be in use of the equipment regardless of the customer lacking technical expertise in handling the measurement equipment. On Appeal, the Tribunal held that the metering equipment is installed for measuring the amount of gas supplied to the customer for the purpose of billing and hence the use of the equipment is by the respondent and not the customer. The decision of the Tribunal was thus assailed before the Apex Court.

17. The Hon'ble Apex Court, after noticing that Section 65(105)(zzzzj) of the Finance Act, 1994 provided for taxability of supply of tangible goods for use, without transferring right of possession and effective control over such goods, as taxable service as well as the decision *in BSNL v UOI* cited supra including the elucidation of the "transfer of right to use any goods' by Dr. A.R. Lakshmanan, J and also the decision of the Apex Court in ***Great Eastern Shipping Company Ltd v State of Karnataka, 2020 (3) SCC 354*** and also the decision in ***All India Federation of Tax Practitioners v UOI, (2007) 7 SCC 527***, went on to hold as under:

"18. **The introduction of Section 65(105)(zzzzj) in the Finance Act, 1994, was with the intention of taxing such activities that enable the customer's use of the service provider's goods without transfer of the right of possession and effective control. This provision creates an element of taxation over a service, as opposed to a 'deemed sale' under Article 366(29A)(d).** For the purpose of clarification, the Department of Revenue issued a Circular, D.O.F. No. 334/1/2008-TRU, dated 29 February, 2008. The said circular clarified the applicability of Section 65(105)(zzzzj) vis-a-vis Article 366(29A)(d). The relevant portions of the circular are as follows :

"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."*

(emphasis supplied)

19. **The above circular clarified that Section 65(105)(zzzzj) is applicable only to those transactions where there is a supply of tangible goods for use, without the transfer of possession or effective control to the recipient.** This aspect has been interpreted by various Courts and Tribunals. In the Bombay High Court decision in *Indian National Shipowners' Association and Anr. v. Union of India and Others ("Shipowners")* [(2009) 4 AIR Bom R 775 = 2009 (14) S.T.R. 289 (Bom.)], the petitioners were engaged in providing services to major exploration and production operators by supplying their various vessels including offshore drilling rigs, offshore support vessels, harbour tugs, and construction barges. The question before the Bombay High Court was whether, prior to the introduction of Section 65(105)(zzzzj) in 2008, the petitioner could be taxed on its services in relation to mining of mineral, oil, or gas under Section 65(105)(zzzy). In the present matter, we are not concerned with the merits of *Shipowners'*, which was affirmed on appeal by this Court in *Union of India v. Indian National Shipowners' Association and Anr.* [2010 (14) SCC 438 = 2011 (21) S.T.R. 3 (S.C.)]. This Court explicitly restricted itself to the interpretation of Section 65(105)(zzz) while leaving the other observations on interpretation of the law, "open to be considered at length at an appropriate stage" [2010 (14) SCC 438, para 7]. We note however, the analysis of Section 65(105)(zzzzj) of the Bombay High Court, where the High Court observed :

"38. Entry (zzzzj) is entirely a new entry. Whereas Entry (zzzy) covers services provided to any person in relation to mining of mineral, oil or gas, *services covered by Entry (zzzzj) can be identified by the presence of two characteristics namely (a) supply of tangible goods including machinery, equipment and appliances for use, (b) there is no transfer of*

right of possession and effective control of such machinery, equipment and appliances. According to the members of the 1st petitioner, they supply offshore support vessels to carry out jobs like anchor handling, towing of vessels, supply to rig or platform, diving support, fire fighting etc. Their marine construction barges support offshore construction, provide accommodation, crane support and stoppage area on main deck or equipment. Their harbour tugs are deployed for piloting big vessels in and out of the harbour and for husbanding main fleet. They give vessels on time charter basis to oil and gas producers to carry out offshore exploration and production activities. The right of possession and effective control of such machinery, equipment and appliances is not parted with. [...]"

(emphasis supplied)

20. The taxable service is defined as a service which is provided or which is to be provided by any person to another "in relation to supply of tangible goods". The provision indicates that the goods may include machinery, equipment or appliances. **The crucial ingredient of the definition is that the supply of tangible goods is for the use of another, without transferring the right of possession and effective control "of such machinery, equipment and appliances". Hence, in order to attract the definition of a taxable service under sub-clause (zzzzj), the ingredients that have to be fulfilled are :**

(i) The provision of a service;

(ii) The service is provided by a person to another person;

(iii) The service is provided in relation to the supply of tangible goods, including machinery, equipment and appliances;

(iv) There is no transfer of the right of possession;

(v) Effective control over the goods continues to be with the service provider; and

(vi) The goods are supplied for use by the recipient of the service. There is an element of service which is the foundation for the levy of the tax." (emphasis supplied)

18. Thereafter, the Apex Court goes on to notice the various clauses of the Gas Sales Agreement and after determining that it is clear from the provisions of the agreement that the ingredient of not transferring the ownership, possession or effective control of the goods under Section 65(105)(zzzzj) is satisfied, goes on to state that the crux of the dispute is whether the supply of tangible goods – the SKID equipment- is for the use of the purchaser, and thereafter goes on to hold:

"26. Under Section 65(105)(zzzzj), the taxable service is provided or to be provided in relation to the supply of tangible goods for the use of another, without transferring the right of possession and effective control. The expression "use" has been defined in Black's Law Dictionary :

"Use, n. Act of employing everything, or state of being employed; application, as the use of a pen, or his machines are in use. Also the fact of being used or employed habitually; usage, as, the wear and tear resulting from ordinary use. *Berry-Kofron Dental Laboratory Co. v. Smith*, 345 Mo. 922, 137 S.W. 2d 452, 454, 455, 456. The purpose served; a purpose, object or end for useful or advantageous nature. *Brown v. Kennedy*, Ohio Appellant. 49 N.E. 2d 417, 418. To put or bring into action or service; to employ for or apply to a given purpose. *Beggs v. Texas Dept. of Mental Health and Mental Retardation*, Tex. Civ. App., 496 S.W.2d 252, 254. To avail oneself of; to employ; to utilize; to carry out a purpose or action by means of; to put into action or service, especially to attain an end. *State v. Howard*, 221 Kan. 51, 557 P. 2d 1280, 1281.

Non-technical sense. The "use" of a thing means that one is to enjoy, hold, occupy or have some manner of benefit thereof. Use also means usefulness, utility, advantage, productive of benefit."

27. The expression "use" does not have a fixed meaning. The content of the expression must be based on the context in which the expression is adopted. The use of an article may or may not result in a visible change in its form or substance. Moreover, the nature of use is conditioned by the kind of article which is put to use. Section 65(105) of the Finance Act, 1994 envisages myriad interpretations of the expression "use", in a variety of services such as telecommunication [Section 65(105)(zzzzb), Finance Act, 1994], renting of immovable property [Section 65(105)(zzzz), Finance Act, 1994], and services related to art, entertainment, and marriage [Section 65(105)(zzzzr), Finance Act, 1994]. In the case of some articles, use may be signified by a physical operation of the article by the person who uses it. In such a case, actual physical use is what is meant by the supply of the goods for the use of another. In the case of others, the nature of the goods supplied impacts the character of the use to which the goods can be put. As an illustration, Section 65(105)(zzzze) of the Finance Act, 1994, seeks to tax services related to information technology and interprets the "right to use" to include the "right to reproduce, distribute, sell, etc. [Circular D.O.F. No. 334/1/2008-TRU, dated 29 February, 2008]". This understanding of "use" differs from the

supply of tangible goods under Section 65(105)(zzzzj) at hand, where effective control or possession is not ceded. **Thus, physical operation is not the only or invariable feature of use. As a corollary to the same, technical expertise over the goods in question is not a sine qua non for determining the ability of the consumer to use the goods. Therefore, the expression “use” also signifies the application of the goods for the purpose for which they have been supplied under the terms of a contract.**

19. The Apex court, after observing in para 28 that “**Section 65(105)(zzzzj) applies precisely in a situation where the use of the goods by a person is not accompanied by control and possession.** ‘Use’ in the context of SKID equipment postulates the utilization of the equipment for the purpose of fulfilling the purpose of the contract. **Section 65(105)(zzzzj) does not require exclusivity of use.** The SKID equipment is an intrinsic element of the service which is provided by the respondent, acting pursuant to the GSA, as a supplier of natural gas to its buyers”, thereafter in the concluding paragraphs 37 to 39, goes on to hold in para 37 “we find ourselves in agreement with the findings of the Adjudicating Authority”, and in para 39, sets aside the order of the Tribunal and restores the order of the Adjudicating Authority.
20. In yet another decision, reported as ***K. P. Mozika v Oil and Natural Gas Corporation Ltd, 2024 (388) ELT 11 (SC)***, the Hon’ble Apex Court, while deciding a group of appeals, where the assessees have, under a contract, agreed to provide different categories of motor vehicles, such as trucks, trailers, tankers, buses, scrapping winch chassis, and cranes to the Oil and Natural Gas Corporation Ltd (ONGC) and also other cases where Indian Oil Corporation Limited had entered into agreements with transporters to provide tank trucks to deliver its petroleum products, examined the question whether, by hiring these motor vehicles/cranes there is a transfer of the right to use any goods. The Court has also stated that as a result, there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax. The relevant portions of the Judgement are as under:

"22. In the present group of appeals, broadly, we are dealing with the following categories of cases :

- (a) Agreements for hiring cranes;
- (b) Agreements for hiring trucks;
- (c) Agreements for hiring of buses;
- (d) Agreements for transportation of petroleum products by vehicles;
- (e) Agreements for hiring trailers;
- (f) Agreements for hiring water tankers; and
- (g) Agreements for hiring of scrapping winch chassis.

23. The impugned judgment and order subject matter of challenge in Civil Appeal No. 3548 of 2017 decides a group of 20 cases wherein the agreements were for providing/hiring cranes to ONGC and agreements pertaining to water tankers and trailers. The said judgment was against the assessee."

The Apex Court then goes on to notice the earlier decisions in 20th Century Finance Corporation as well as in the case of BSNL as to the interpretation of sub-clause (d) of Clause (29A) and after observing that what is relevant in the case of BSNL is the concurring view taken by Dr. A.R. Lakshmanan J, reproduces the attributes laid down as to what constitutes a transaction for the transfer of the right to use the goods. Thereafter, emphasising that the view taken by Dr. A.R. Lakshmanan J, has been consistently followed by the Apex Court in various decisions, again reproduced from the decision in Quick Heal Technologies Ltd where the tests laid down by Dr. A.R. Lakshmanan, J, and after noticing the terms and conditions of the contract which is the subject matter of challenge in Civil Appeal No.3548 of 2017, and analysing them on the touchstone of the tests as laid down by Dr. A.R. Lakshmanan J, goes on to hold:

"35. On a conjoint reading of the aforesaid terms of the contract, it is apparent that the contractor has an option of replacing the cranes in case one of the cranes was not working properly. Only the contractor is liable to take care of the legal consequences of using the cranes. The contractor must maintain the cranes, and it is for the contractor to pay for consumables like fuel, oil, etc. Even the cranes must be moved and operated by the crew members appointed by the contractor. Moreover, in case of any mishap or accident in connection with the cranes or connection with the use of the cranes or as a consequence thereof, the

entire liability will be of the contractor and not of the ONGC. Thus, in short, the contract is for providing the service of cranes to ONGC. The reason is that the transferee (ONGC) is not required to face legal consequences for using the cranes supplied by the contractor. Therefore, the tests laid down in clauses (c) and (d) of Paragraph 97 of the decision of Dr. A.R. Laxmanan, J. are not fulfilled in this case. Moreover, on a conjoint reading of the aforesaid clauses, it appears that the use of the cranes provided by the contractor to ONGC will be by way of only a permissive use. Though the cranes are used for carrying out the work as suggested by ONGC, the entire control over the cranes is retained by the contractor, inasmuch as it is the contractor who provides crew members for operating the cranes, it is the contractor who has to pay for fuel, oil, etc. and for maintenance of any loss or damage to the equipment of the contractor, staff of the contractor, any third party and staff and property of ONGC. Therefore, we find that as regards the contract to provide cranes, the finding of the High Court that there was a transfer of the right to use cranes was not correct as the transactions do not satisfy all the five tests referred to above.

36. We have also carefully perused the terms and conditions of the contract subject matter of challenge in Civil Appeal Nos. 3566-3569 of 2017. The contract concerns hiring services of ten truck-mounted all-terrain hydraulic cranes with the crew. In this case, like the other contracts, clause 2 provides that the supply of equipment will not be by way of lease or transfer or right to use the equipment. All the other clauses are practically the same. Even in this case, also, the reasons which are recorded earlier will squarely apply. The contracts do not reflect the intention on the part of the contractor to transfer the right to use the goods”

The Apex Court goes on to discuss the terms and conditions of the contract dated 20th November 2008 which is the subject matter of challenge in Civil Appeal No.4657 of 2013, which is by and between ONGC and M/s. Ali Brothers for hiring a 20-metre-ton trailer and holds:

“38. Looking at these clauses, it is obvious that the contractor fully controls the trailers during the contract period, and therefore, again, this is a case of a license granted to ONGC to use the trailer, and the right to use the trailer is not transferred to ONGC. Hence, test (c) out of the five tests is not fulfilled in this case.”

Thereafter, the Apex Court goes on to discuss the terms and conditions of the contract in Civil Appeal No.383 of 2013, for operating tank trucks to deliver petroleum products at specified rates and holds:

“40. On a conjoint reading of the clauses mentioned above, it is apparent that there is no intention to transfer the use of any particular tank truck in favour of ONGC. The contract is to provide tank trucks for the transportation of goods. Once the tank trucks provided by the contractor are loaded with goods, the entire responsibility of their safe transit, including avoiding contamination, delivery, and unloading at the destination, is of the contractor. The test (c) is not satisfied in this case. Therefore, it is impossible to conclude that there is a transfer of the right to use tank trucks in favour of IOCL. Essentially, it is a contract to provide the service of transporting the goods using tank trucks to IOCL. Therefore, even in this case, all the five tests laid down by Dr. A.R. Laxmanan, J. are not fulfilled.” (emphasis supplied)

21. Thereafter, the Apex Court in the said decision of ***K. P. Mozika v Oil and Natural Gas Corporation Ltd, 2024 (388) ELT 11 (SC)***, refers to Section 65 (105) (zzzzj) of the Finance Act, 1994 and expounds as to when a transaction would be that of rendering service within the meaning of the said section by holding as under:

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

"Section 65. Definitions. - xx xx xx

(1) xx xx xx

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

(a) xx xx xx

(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.

Conclusion

43. To conclude, all the appeals preferred by the assesseees will have to be allowed.

44. Accordingly, we allow all the appeals of the assesseees by holding that the contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same. Civil Appeal No. 3580 of 2017 preferred by the Union of India is disposed of in view of the earlier findings with the liberty to the Union of India to initiate proceedings, if any, for recovery of service tax in accordance with law.

45. There will be no order as to costs." **(emphasis supplied)**

22. Bearing the above in mind, we notice the findings of the Adjudicating Authority that are recorded as under:

" Scope of the work orders

8. In this context, it is pertinent to study the scope of the work orders under which the said services were provided by the service provider. The service provider has provided the above services to various service recipients including M/s. RS Windtech Engineers Private Limited, Kanyakumari. The Work order No.RSWE/Cr-Gen-1005/13 dated 16.03.2013 of this service provider which is scanned and placed below:-"

RS WINDTECH ENGINEERS PRIVATE LIMITED
(ISO 9001 : 2008 & OHSAS 18001 : 2007 Certified Company)
E-mail : rsw@rswindtech.com, Web : www.rswindtech.com



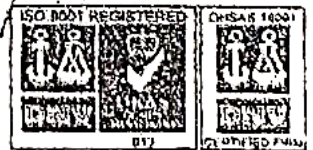
RS WINDTECH
ENGINEERS (P) LTD

Work Order

Original Copy

Work Order No: RSWE/ Cr-Gen-1005/13					
WO Date: 16.03.2013			Name: Mr. Alex Bharath		
Customer: RS WINDTECH ENGINEER(P)LTD 8/126 E 3, Main Road, Aratvoimozhi Kanyakumari Dist, Tamilnadu.			Address: Friends Road Carriers Kuvalkinaru Trinelveli Dist, Tamilnadu. Cell-9443756698		
E-Mail: cranc@rswindtech.com			Activity: Hiring of Trailer		
Sl No	Activity Description	Qty	Rate	Amount	Material scope
1	Hire Charges of Flat Bed Trailer to carry the Counter weights of 100 Ton Crane from GE, Kolahpur yard to Greenko site, Karad on 23 rd Feb 2013.	1 No	25000/-	25000/-	Including Diesel, Accommodation Food and Conveyance.
2	Hire Charges of Flat Bed Trailer to carry the Tools Container from RSWE to Panama site, Karad on 01 st Mar 2013.	1 No	85000/-	85000/-	Including Diesel, Accommodation Food and Conveyance.
3	Hire Charges of Taurus Lorry to carry 12 ton Hydra Crane from RSWE to Gudimangalam	1 No	16000/-	16000/-	Including Diesel, Accommodation Food and Conveyance.

ISO 9001:2008 REGISTERED
OHSAS 18001:2007 REGISTERED
11/196, Entheppur Pulhoor, Gudimangalam, Udumalpet T.K., Coimbatore Dist - 642 201. Ph : 04262-213358



The Work are to be carried out in various working sites of RSWE as per the requirements.

Terms and Conditions:

1. This work order is only for shifting of accessories.
2. No Mobilization & De-Mobilization charges will be paid.
3. No Service tax will be paid.
4. Hire charges includes cost of fuel and crew Food & accommodation. All the R T O issues pertained to the Trallers are to be cleared by FRC on its own cost.
5. Friends Road Carriers shall insure its Trailers and crew. All liabilities on account of workmen compensation shall be to the account of Friends Road Carriers for its workmen only. The Trailers/ Lorry shall be comprehensively insured including for third party liability while travelling on its own by FRC.
6. The Health, Safety and Environment rules shall be strictly followed by FRC and Health, safety and Environment plan shall be drawn out by FRC as per RSWE requirements, on deployment of Trailers. The following valid documents should accompany the Trailers, (a) RC book (b) Tax paid recelpt from origin and work place (c) Fitness certificate (d) Insurance (e) Pollution certificate with photo (f) Driving License (Heavy)
7. This contract shall be governed by Indian Laws and so far as disputes between the party's efforts shall be made to settle amicably, failing which it can be referred to Nagercoil courts only (by either party)
8. In case of any breakdown the same to be repaired immediately and If it is a major breakdown the same to be replaced as mutually agreed upon, but without affecting our work and making any loss to us.

(For RS Windtech Engg. Pvt. Ltd)
Carriers)

Authorized Signatory
Signatory



For Friends Road

Authorized

"8.1.1 On perusal of the above work order, it can be observed from the above work order, the scope of the work is supply of trailer to their service on hire charge basis. On going through the conditions of the said work order, it could be observed that at condition No. 4, 5 6 and B are reproduced below:

4. "Hire Charges includes cost of fuel and crew Food & Accommodation"

5 Friends Road carriers shall insure its Trailers and crew All liabilities on account of workmen compensation shall be to the account of Friends Road Carriers for its work men only. The Trailers / Lorry shall be comprehensively Insured including for third party liability while travelling on its won by FRC.

6. The Health, Safety and Environment rules shall be strictly followed by FRC and Health, safety and Environment plan shall be drawn out by FRC as per RSWE requirements, on deployment of Trailers. The following valid documents should accompany the Trallers, (a) RC book (b)Tax paid receipt from origin and work place (c) Fitness certificate(d) Insurance (e) Pollution certificate with phato (1) Driving License(Heavy)

8. In case of any breakdown the same to be repaired Immediately and if it is a major breakdown the same to be replaced as mutually agreed upon, but without affecting our work and making any loss to us.

8.1.2 Further I observe that in the above work order, the other terms and conditions are more or less same so that it was the responsibility of the service provider to provide drivers, labours and other expertise along with the trallers In this regard, it is pertinent to refer to Hon'ble High court of judicature at Madras (Jurisdictional High court) Division Bench decision rendered in the case of Aban Loyd Chiles Offshore Limited vs. State of Tamil Nadu reported in [2012] 53 VST 89 (Mad HC) wherein it was held that, effective control and possession of drilling equipment was not transferred in a case where drilling rigs were operated by personnel of the transferor as per the directions of the transferee. In this case also as per the conditions of the work order it was the responsibility of the service provider to supply their crew along with the trailer Applying the same analogy, in the issue on hand also, the appellant has supplied the vehicles along with driver and helper to operate the vehicles, there is no transfer of possession and effective control of the vehicle.

8.1.3 In other words, the right of possession and effective control is with the service provider and the same has not been transferred to the service receiver at any point of time and the service provided by the service provider could rightly be classified under the category of supply of tangible goods service as enunciated under Section 65(105) (zzzzj) of the Finance Act, 1994.

8.2 Further the service provider has contended that the service receivers were paying service tax under the category of GTA service and no service tax liability lies on them under the category of supply of tangible goods From the work order issued by the service receiver It could be observed that it is not a mere transportation of goods as being sought to be projected by the service provider, but the work undertaken by them involves supply of these goods by the service provider for use by various service receivers without transferring the possession and the effective control of the goods.

On perusal of the work order it was observed that the work was allotted to the service provider on lump sum basis Le. for Flat Bed Trailer rate was Rs. 25000/- per trailer to carry the Counter weights of 100 ton crane, for Flat Bed Trailer rate was Rs. 85000/- per trailer to carry the tools container and for Taurus lorry to carry 12 ton Hydra crane rate was Rs. 16000/- per trailer. Needless mention that when the contract was for lump sum basis, the service provider is eligible to receive the above consideration even when the trailers were in idle condition. The specific condition providing for charges for the supply of trailers when it is not run to certain minimum distance will sufficiently establish the actual nature of the activities undertaken by the service provider and to understand the distinction between the nature of GTA service and Supply of Tangible Goods service. Under GTA service, there is no such scope for payment of hire charges for the distance not travelled. The hire charges to a transporter are payable for the transport of a particular consignment from one place to another under a standard rate of charges determined by the market conditions. Such a transportation or movement of goods on consignment basis does not require an elaborate contract as seen in the instant case of supply of trailers / cranes.

23. We have also perused yet another work order which has been annexed to the appeal by the Appellant, namely, work order No.RSWE/1041/11-12 dated 30.10.2012 of M/s. RS Windtech Engineers Private Limited, Kanyakumari that was placed on the Appellant and find it also to be on similar lines.
24. We find that in the work order No.RSWE/Cr-Gen-1005/13 dated 16.03.2013, that was examined by the Adjudicating Authority, the activity is indicated as "Hiring of Trailer". The activity description, for example, clearly states "Hire Charges of Flat Bed Trailer to carry the Counter weights of 100 Ton Crane from GE, Kolhapur hard to Greenko site, Karad on 23rd Feb 2013"; "Hire Charges of Flat Bed Trailer to carry the Tools Container from RSWE to Panama Site, Karad on 01st March 2013", " Hire Charges of Taurus Lorry to carry 12 ton Hydra Crane from RSWE to Gudimangalam". It is also seen stated that the works are to be carried out in various working sites of RSWE as per the requirements. The terms and conditions indicate that the work order is only for shifting of accessories, that no mobilization and de mobilization charges will be paid, no Service tax will be paid. The terms and conditions also stipulated that the hire charges are inclusive of the cost of fuel, crew, food and accommodation. It is the onus of the appellant to insure its

trailers and crew and all liabilities on account of workmen compensation are stated to be that of the appellant. The trailer is to be comprehensively insured including for third party liability, by the appellant, while traveling on its own. The Health, Safety and Environment rules should be strictly followed by the appellant and Health, Safety and Environment plan shall be drawn out by the appellant as per the service recipient's requirements, on deployment of Trailers. The valid documents such as RC Book, Tax paid receipt from origin and work place, Fitness Certificate, Insurance, pollution certificate with photo, driving licence (heavy) should accompany the Trailer. The contract shall be governed by Indian laws and in case of any breakdown, the same to be repaired immediately and if it is a major breakdown the same to be replaced as mutually agreed upon but without affecting work and making any loss to the service recipient. The work order No.RSWE/1041/11-12 dated 30.10.2012, annexed to the appeal, has indicated the activity as "Trailer Hire", Activity Description, inter-alia, as " Hire Charges of 01 Flat Bed Trailer for internal shifting of 330 T Crane Counter Weight & Boom from Thungavi to Dasarpatti on 31.08.2012", "Hire Charges of 01 Flat Bed Trailer for internal shifting of 160 T Krupp Crane Counter Weight & Boom from Yard to GE Kottaikarumkulam site and back on 17.10.2012" etc. It is also seen stated that the works are to be carried out for various RSWE Work sites and the terms and conditions stated are verbatim as already noticed above.

25. In our considered view, it would seem that the activities enumerated above fulfil the requirement of Section 65(105)(zzzzj) as enumerated in the decision of the Hon'ble Apex Court in ***Commissioner of Service Tax, Ahmedabad v Adani Gas Ltd, 2020 (40) G.S.T.L 145 (S.C)***, in that it satisfies the six ingredients that have to be fulfilled in order to attract the definition of a taxable service under sub-clause (zzzzj), namely,

- 1) Service to any person: True, it is provided to the service recipient.
- 2) By any other person: True, it is provided by the appellant.
- 3) The service is provided in relation to the supply of tangible goods, including machinery, equipment and appliances: Yes, the service is

provided in relation to the supply of a trailer, a physical, tangible asset which is also a commercial transport equipment

- 4) There is no transfer of the right of possession: Correct, there isn't.
 - 5) Effective control over the goods continues to be with the service provider: Yes, as the driver, fuel, crew accommodation, comprehensive insurance, operational and physical control over the vehicle never leaves the hands of the appellant, albeit through the driver and crew provided the appellant.
 - 6) The goods are supplied for use by the recipient: Yes, since as per the Adani decision, 'use' does not require physical operation, it signifies the application of the goods (trailer) for the purpose for which they have been supplied. Here, the purpose being to move the recipient's goods to its various working sites, by placing its goods in the trailer of the appellant, the service recipient is "applying" the trailer for its intended purpose.
26. It is also pertinent to recall that the Apex Court in the Adani case *supra*, has expounded on the term "use" and held that *"Thus, physical operation is not the only or invariable feature of use. As a corollary to the same, technical expertise over the goods in question is not a sine qua non for determining the ability of the consumer to use the goods. Therefore, the expression "use" also signifies the application of the goods for the purpose for which they have been supplied under the terms of a contract."* It has also been held in Adani case that *"Section 65(105)(zzzzj) applies precisely in a situation where the use of the goods by a person is not accompanied by control and possession"* and further that *"Section 65(105)(zzzzj) does not require exclusivity of use."* Thus, for all purposes this would tantamount to a case of licence granted by the appellant to the service recipient to use the trailer. In our considered view, Section 65(105)(zzzzj) was enacted precisely to levy service tax on such "licence to use" that goes in tandem with the tangible goods supplied, where right of possession and effective control are not transferred to the service recipient.
27. The aforesaid view is also in consonance with the findings in the aforementioned K.P. Mozika case. In the said case, after noticing the terms and conditions of the contract which is the subject matter of

challenge in Civil Appeal No.3548 of 2017, and analysing them on the anvil of the tests as laid down by Dr. A.R. Lakshmanan J in BSNL case, the Apex Court has held that the contract is for providing the services of cranes to ONGC and the use of the cranes provided by the contractor to ONGC will be by way of only a permissive use. Again, after perusing the terms and conditions of the contract which was the subject matter of challenge in Civil Appeal Nos. 3566-3569 of 2017, the clauses were found to be practically the same and it was held that in this case, also, the reasons which are recorded earlier will squarely apply. Further, in the context of Civil Appeal No.4657 of 2013, which is by and between ONGC and M/s. Ali Brothers for hiring a 20-metre-ton trailer, the Apex Court has held that looking at these clauses, it is obvious that the contractor fully controls the trailers during the contract period, and therefore, again, this is a case of a license granted to ONGC to use the trailer. Likewise, after discussing the terms and conditions of the contract in Civil Appeal No.383 of 2013, it was explicitly observed in para 40 that "The contract is to provide tank trucks for the transportation of goods. Once the tank trucks provided by the contractor are loaded with goods, the entire responsibility of their safe transit, including avoiding contamination, delivery, and unloading at the destination, is of the contractor. The test (c) is not satisfied in this case. Therefore, it is impossible to conclude that there is a transfer of the right to use tank trucks in favour of IOCL. Essentially, it is a contract to provide the service of transporting the goods using tank trucks to IOCL." Thereafter, the Apex Court has gone on to explicitly hold in para 42 that *"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."*

28. It is important to bear in mind that the aforesaid findings were consequent to the questions framed at the outset where the Hon'ble Court has noted that the question is whether, by hiring the motor vehicles/cranes there is a transfer of the right to use any goods and as

a result there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax. What is of significance is that the Hon'ble Supreme Court, after examining the clauses of the contract for hiring a trailer as well as examining a contract for providing tank trucks for transportation of goods and on analysing the nature of the activity, in spite of finding that it is essentially a contract to provide the service of transporting the goods using tank trucks to IOCL, has thereafter, gone on to explicitly state in para 42 as above, classifying such activity as rendering of service within the meaning of Section 65 (105) (zzzzj) of the Finance Act after the said provision came into force. Given the said categorical findings, we are in no position to analyse similar contracts as has been entered into by the appellant in the instant case and come to a different conclusion as to the classification of the same.

29. At this juncture, it is also apposite to note that the Honourable Apex Court, has in its decision in ***Secundrabad Club Etc v. C.I.T – V Etc. [2023] 12 S.C.R. 979 : 2023 INSC 736***, held as under:

*"19. **What is binding, therefore, is the principle underlying a decision which must be discerned in the context of the question(s) involved in that case from which the decision takes its colour.** In a subsequent case, a decision cannot be relied upon in support of a proposition that it did not decide. Therefore, the context or the question, while considering which, a judgment has been rendered assumes significance.*

*20. As against the ratio decidendi of a judgment, an obiter dictum is an observation by a court on a legal question which may not be necessary for the decision pronounced by the court. **However, the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the Court in a case. Although the obiter dictum of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.**" (emphasis supplied)*

30. A coordinate bench of this Tribunal, had observed in its decision by ***Final Order No.40683-40687/2025 dated 02.07.2025***, reported in ***Daimler India Commercial Vehicles Pvt Ltd v. The Commissioner***

of CGST & C.E, Chennai Outer Commissionerate, 2025 (7) TMI 148-CESTAT CHENNAI, in para 77 as under:

“77. In any event, when the Hon’ble Apex Court has held in the Northern Operating Systems that the Appellant therein was, for the relevant period, service recipient of the overseas group company concerned, which can be said to have provided manpower supply service, or a taxable service, and has confirmed the demand for the normal period, after discussions on the contentions advanced relying in intercontinental consultants case as well on revenue neutrality, it is not for this Tribunal to hold that the aspect of revenue neutrality has not been considered by the Honourable Apex Court, and to then deviate therefrom. Depending on the perspective of the litigating rival parties, adherence to judicial discipline may be a boon or a bane, a millstone, or the sheet anchor, and the outcome may be propitious or a vicissitude to be weathered. This Tribunal had an occasion to analyze the salutary principles of judicial discipline, binding precedent, ratio decidendi, obiter dicta and the Doctrine of Stare Decisis in extenso in a decision in *Motonic India Automotive Pvt Ltd v. Commissioner of GST & Central Excise, Chennai rendered by Final Order No.40498/2025 dated 06-05-2025 in Excise Appeal No.42207 of 2017. Therefore, to our mind, it remains a principle to abide by, unwaveringly, implicitly, and unquestioningly, which we hereby do.*” (emphasis supplied)

31. We find that the appellant’s contention that the said services are appropriately classifiable under “Transportation of Goods by Road Service” was negated by the Adjudicating Authority, inter-alia, on the ground that it was mandatory on the part of the appellant to issue consignment note containing details as specified under Rule 4B of the Service Tax Rules and that the appellant had not issued such consignment notes. The appellant has contended that their nature of activity indicates that they are rendering GTA services and that the invoices issued by them to the service recipient had all such details. It is pertinent to note that the appellant has not disputed the contents of the work order that has been relied upon in the SCN or which has been taken for analysis in the impugned order by the adjudicating authority while discussing the scope of the work orders of the appellant. Rather, it is the version of the appellant that it would amount to rendering of GTA services. We find the reliance placed by the Adjudicating Authority on the decision in ***Birla Ready Mix v CCE, Noida, 2012 (12) TMI 736-***

CESTAT, New Delhi, apposite for such negation of the appellant's contention. In any event, given the aforesaid Supreme Court Judgements and given our findings supra in light of the same as to the nature of the appellant's said activity being covered under supply of tangible goods service, we find no merit in the aforesaid contentions.

32. We are therefore of the firm opinion that the findings of the Adjudicating Authority that the appellant was rendering services under the category of "Supply of Tangible Goods Service" warrants no interference at our hands. We also do not find any merit in the appellant's contention that for the period post 01.07.2012 the appellant has not rendered a specific finding regarding the "right to use". As already observed by us supra, the Adjudicating Authority has categorically rendered a finding that the right of possession and effective control is with the appellant and the same has not been transferred to the service received at any point of time and the service is therefore rightly classifiable under Section 65(105)(zzzzj). We have also observed supra that the Section 66E(f) unambiguously conveys that transferring right of possession and effective control of tangible goods is outside the purview of the taxable service, consistent with the constitutional limitations by which Parliament is proscribed. The Adjudicating Authority has also discussed the applicability of the said provision in para 10 of the impugned order while finding the demand tenable for the period from 01.07.2012 to 31.03.2014. When concededly, it is not the appellant's case that the service being rendered by the appellant to its service providers had undergone any drastic change and when it admittedly remained the same, we find the aforesaid contention of the appellant is misconceived. For the aforesaid reasons and given the aforesaid Supreme Court decisions and in light of our findings relying on the same that the said services of the appellant are covered under "Supply of Tangible Goods services", we find the reliance placed by the appellant on the decisions in support of its contention that it is covered under GTA service inapplicable and distinguishable in light of the differing facts and circumstances of the said cases. Given that the appellant has admitted to rendering Erection, Commissioning and Installation Service and the consequent liability, we are therefore of the considered view that the findings in the impugned

order that the appellant was rendering services under the category "Supply of Tangible Goods Service" and under "Erection, Commissioning and Installation Services" are tenable and are liable to be upheld.

33. We now turn to the issue of whether the confirmation of demand invoking the extended period of limitation is tenable.
34. The Adjudicating Authority has rendered findings, inter-alia, that the non-payment of service tax was unearthed only after thorough investigation by the Department, that the appellant had not disclosed the receipt of entire consideration in the ST-3 return for the period 2012-2013. In the statement given also the appellant had admitted to the non-filing of returns for the period 2009-10 to 2011-12 and from 2013-14 onwards also. It was found that the appellant had failed to correctly classify their service, failed to indicate the entire consideration received for providing taxable service in their statutory ST 3 returns, failed to file the statutory returns for the whole period of demand except for the year 2012-13 and thereby failed to pay the service tax and has contravened sections 68,69 and 70 of the Act with intent to evade payment of service tax. It was held that invoking extended period of limitation in the show cause notice is sustainable. It was also held that there is no case of any bonafide belief that the activities undertaken by them did not attract service tax under the category of supply of Tangible Goods Service and in light of deliberate contraventions with intent to evade payment of service tax penalty is leviable under section 78. For the said acts of commission and omission penalty under Section 77(2) was also found imposable.
35. From the appeal records, we notice that the SCN states that the appellant has given a statement that he had collected service tax from service receivers in respect of supply of tangible goods services and has not paid service tax in full due to shortage of funds since the service receivers did not pay the amounts in time and also admits to the filing of ST-3 returns only for the year 2012-13. The statement is not seen to be retracted. The SCN has alleged that the appellant had not filed the ST 3 returns except in respect of the year 2012-13 for which the returns were filed and partial service tax liability was discharged after being

instructed by the investigating officers. It was alleged that the appellant had wilfully suppressed the fact of providing the taxable service without registering for "erection commissioning service", without declaring the value of supply of tangible goods service and without filing ST-3 returns and thus contravened the provisions of section 67,68,69 and 70 of the Finance Act with intent to evade payment of service tax and hence extended period is liable to be invoked. The reply filed by the appellant on record do not contest the aforesaid allegations for invoking the extended period.

36. We further find that the aforementioned findings of the Adjudicating Authority in the impugned order, that invoking extended period of limitation in the show cause notice is sustainable, has been rendered after examining the aforesaid allegations. It is also pertinent to notice that in the appeal preferred, no grounds controverting the invoking of extended period of limitation are seen taken. On the contrary, in ground 21.1, it has been contended that since the demand has been confirmed invoking the extended period of limitation, the cenvat credit based on the documents relevant for the demand period should be extended if they were otherwise eligible. In the written synopsis filed and the submissions at the bar the contention on limitation is confined to a plea that the issue involved is that of interpretation of law and therefore invocation of larger period of limitation is not sustainable.
37. Admittedly, the appellant is cognizant of the contours of both supply of tangible goods service as well as erection, commissioning and installation service as the appellant has stated that he is registered for rendering both the services, the rendering of the latter stood conceded and the liability towards which is also stated to be discharged later on, albeit piecemeal. In his unretracted statement the appellant has stated that it had collected service tax on supply of tangible goods service and has not paid the same to the Government. Though the appellant has argued that it has rendered Goods Transport Agency Service, the Adjudicating Authority has found that the appellant had neither issued any consignment note nor adduced evidence to prove that they have received only freight charges. The fact that ST-3 returns were filed erratically and that too indicating partial discharge of liability is not

controverted. There is no claim of bonafides nor even a plea that the liability has been declared in the ST-3 returns correctly, though discharged partly, to show that there was no intent to evade payment of service tax. Concededly the ST-3 returns itself have not been filed for the entire disputed period, save for 2012-13. There has been no contest to the findings of the Adjudicating Authority regarding invoking the extended period of limitation either in the reply of the appellant or in the grounds of the appeal preferred before us. In these circumstances, we do not find substance in the claim that it was only issues of interpretation and that therefore the extended period of limitation cannot be invoked. We therefore find no reason to interdict the findings of the Adjudicating Authority on this aspect of invoking extended period of limitation. We are also therefore disinclined to interfere with the penalties imposed which are found to be reasonable and in line with the statutory provisions.

38. It is noticed that the Adjudicating Authority has not allowed the plea of cum-tax benefit and denied cenvat credit citing provisions that were not put to the notice of the appellant in the SCN. However, the appellant has stated that it has since discharged its liability on Erection Commissioning and Installation services adopting the cum tax benefit, which stood denied by the adjudicating authority, as well as claiming its cenvat credit entitlement. We hold that the denial of cum-tax benefit is untenable given the statutory provisions in Section 67(2) of the Finance Act, 1994 and that the denial of cenvat credit is based on premises beyond the show cause notice and is also untenable. In view of our aforesaid findings, while the appellant is entitled to cum-tax benefit as well as computation of cenvat credit entitlement without invoking the bar prescribed in Rule 4(1), it needs to be verified whether the liability has been correctly discharged. It is necessary to give an opportunity to the appellant to produce the relevant documents in support of its aforesaid claim and the worksheet of its computation before the jurisdictional adjudicating authority. The contentions in so far as the actual receipts pertaining to 2010-11 can also be stated before the said authority with necessary evidence in this regard. However, given the entitlement to cum tax benefit as well as cenvat credit claim allowed including production of evidence to substantiate the contentions on

actual receipts pertaining to 2010-11, the consequent duty liabilities as well as consequent penalty under Section 78 requires recomputation. Hence, for this limited purpose, the matter is remanded to the jurisdictional adjudicating authority who shall comply with the principles of natural justice and complete the proceedings preferably within 90 days from receipt of a copy of this order. The appellant is permitted to adduce evidence as stated above and is directed to obviate any delay and to fully cooperate with the *denovo* proceedings.

39. The appeal is disposed of by remand in the above terms.

(Order pronounced in the open court on 29.05.2026)

Sd/-

(AJAYAN T.V.)
Member (Judicial)

Sd/-

(M. AJIT KUMAR)
Member (Technical)