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

Service Tax Appeal No. 42154 of 2016

(Arising out of Order in Original No. 8/2016 (Reassigned) dated 31.5.2016 passed by the Commissioner of Central Excise, Chennai – III Commissionerate)

Edison Gentech Pvt. Ltd. **Appellant**
No. 107, Park Side Street, Kakkan Colony
Nungambakkam, Chennai – 600 034.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri J. Shankarraman, Advocate for the Appellant
Shri M. Selvakumar, 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. 40745/2026

Date of Hearing: 18.02.2026
Date of Decision: 23.06.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. 8/2016 (Reassigned) dated 31.5.2016 passed by the Commissioner of Central Excise, Chennai – III (impugned order).

Factual Matrix

2. The brief facts of the case are that the appellant is registered for providing taxable services under Transport of Goods by Road/Goods Transport Agency Service and Supply of Tangible Goods for Use Service (**STGU**). The appellant has, since 2004, been engaged in supplying Diesel Generator Sets (**DG sets**) on rental basis to

manufacturing, construction, and software companies. On the basis of specific intelligence that the appellant was not discharging the appropriate service tax under STGU Service and had not filed ST-3 returns, investigation was initiated and relevant records were called for scrutiny by the Central Excise department. Upon verification of the documents, the department was of the view that the appellant had allegedly failed to remit the appropriate service tax within the prescribed time and had thereby evaded payment of service tax. Accordingly, a Show Cause Notice dated 24.10.2013 was issued proposing demand of duty for STGU Service and Transport of Goods by Road Service, along with interest for the period 2008-09 to 2011-12, and proposing imposition of penalties under the provisions of the Finance Act, 1994 (**FA 1994**). After following due process, the Ld. Commissioner as per the impugned order confirmed the demands as proposed in the Show Cause Notice and imposed penalty under Section 78 and under Section 77(1)(a) of the FA 1994. Aggrieved thereby, the appellant is before this Tribunal in the present appeal.

3. The learned Advocate Shri J. Shankarraman appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

Submissions made by the Appellant

3.1 Shri J. Shankarraman the Ld. Advocate for the appellant made the following submissions:

A. The appellant has been hiring out Diesel Generator sets to manufacturing, construction and software companies since 2004. For transportation of the DG sets, the appellant engages a Goods Transport Agency and pays the applicable transport charges. The DG sets are delivered to the customers' premises, remain in their possession, and are operated by them as and when required.

B. Supply of operator is only optional, on specific request, and service tax on such manpower charges has been discharged separately under VCES and accepted by the Department. The responsibility for upkeep and maintenance of the DG sets rests with the customer.

C. On these facts, possession and effective control stood transferred to the customer. The transaction, therefore, amounts to transfer of the right to use goods, i.e., deemed sale under Article 366(29A)(d) of the Constitution. Accordingly, the appellant paid TNGST/VAT on the hire charges from 2004 onwards. A copy of the 'Certificate of Registration' dated 19.11.2004, for this purpose, is submitted with the Appeal Memorandum.

D. The taxable entry relating to supply of tangible goods for use, without transfer of possession and effective control, came into force only on 16.05.2008. CBEC Circular No. 334/1/2008-TRU dated 29.02.2008 clarifies that transactions involving transfer of possession and control are liable to VAT/sales tax as deemed sale and fall outside the scope of the service.

E. In the present case, the customers had uninterrupted possession of the DG sets and used them at their discretion. The appellant retained no operational control. Hence, the activity is exigible only to VAT and not service tax under Section 65(105)(zzzzj) of the FA 1994.

F. The show cause notice relies on limited documents; however, the work orders on record themselves show hiring of DG sets, delivery at the customers' premises, liability of the customers for fuel/usage, and levy of VAT. These documents support the appellant's case that the customers were in possession and effective control of the equipment.

G. Even where an operator was provided, such arrangement was only for contingencies or maintenance support. The DG sets remained at the customers' premises and continued to be under their possession and control. Mere provision of an operator, therefore, does not alter the nature of the transaction.

H. The invoices also describe the arrangement as rental/hiring of DG sets. Since the sets were kept at the customers' premises for use as per their requirement, the transaction clearly answers the description of deemed sale, on which VAT was rightly paid.

I. Amounts recovered towards diesel/oil reimbursement do not form part of any taxable service. In such cases, diesel was procured on behalf of the customer, though the supplier's invoice stood in the customer's name.

J. The contention that the customers lacked control merely because they could not sub-let the DG sets is misconceived. Transfer of the right to use is a deemed sale; it does not require transfer of ownership. Absence of a right to further alienate the goods does not negate possession or effective control.

K. The Department's Circular dated 23.08.2007 also clarifies that once a transaction is treated as sale and subjected to VAT/sales tax, service tax is not leviable on the same transaction. Payment of VAT is a strong indicator of the real nature of the arrangement.

L. The appellant has, in any event, discharged service tax on manpower supply wherever operators were provided.

M. The dispute is interpretational. In view of the statutory scheme and CBEC circulars, the appellant entertained a bona fide belief that only VAT was payable. There is no material to establish suppression or intent to evade. Invocation of the extended period is, therefore, unsustainable.

N. As regards transportation charges of Rs. 68,927/-, the appellant had already paid Rs. 1,35,881/- on 19.01.2013, prior to issuance of notice. In terms of Section 73(3), no proceedings were warranted on this count.

O. For the same reasons, penalties under Sections 77 and 78 are also not imposable. In any event, the appellant had reasonable cause within the meaning of Section 80 of the FA 1994.

P. The Ld. Counsel has relied on the following Circular/ Orders at the Bar, in favour of his submissions:

i) **Para 4.4 of CBEC Circular** No. 334/1/2008 TRU dated 29.02.2008.

ii) **Express Engineers & Spares Pvt. Ltd. -Vs- CST** - 2022 (64) GSTL 112(T).

iii) **Agrawal Builders Vs CCE** - 2019 (24) G.S.T.L. 642 (Tri. - All.).

iv) **Commissioner of Service Tax Vs UFO Moviez India Ltd**. - 2022 (61) G.S.T.L. 4 (S.C.)

The Ld. Counsel prayed that the appeal be allowed on merits as well as on limitation, with consequential relief.

Submissions made by the Respondent-Revenue

3.2 Shri M. Selvakumar, Ld. Authorized Representative appearing for Revenue took us through the impugned order and submitted as follows:

A. The work orders demonstrate that the assessee did not transfer effective possession and control of the DG sets to the customers. The Appellant remained responsible for operation, maintenance, spares, and breakdown handling, while the customers' use was restricted by fixed running-hour limits and additional charges for excess usage.

B. Since possession and operational control remained with the Appellant, the transaction did not amount to a transfer of the right to use the goods. The hiring of DG sets therefore falls within the taxable category of "supply of tangible goods", attracting service tax liability.

C. The records establish that the assessee received taxable transport services and was liable to discharge service tax under Section 68(2) of the FA 1994, read with Rule 2(1)(d)(v)(b) of the Service Tax Rules, 1994. The assessee did not dispute this liability and had already made payment prior to issuance of notice.

D. The assessee's plea that service tax was inapplicable because VAT had been paid was not accepted. Mere payment of VAT does not determine the true nature of the transaction where the contractual terms show that possession and control remained with the assessee.

E. The assessee neither obtained service tax registration nor self-assessed and paid the tax due, until departmental investigation commenced. In view of the contractual terms and the failure to disclose the taxable nature of the transactions, the conduct amounted to wilful suppression of material facts with intent to evade payment of service tax.

F. Accordingly, the extended period under the proviso to Section 73(1) was rightly invoked for recovery of service tax.

The Ld. A.R. prayed that the appeal may be rejected.

Analysis

4. We have heard the parties and carefully perused the appeal. The issue before us is whether hiring DG sets by the Appellant to their customers amount to STGU service.

4.1 We find that the demand is for the period from 2008-09 to 2011-12 and the SCN is dated 24.10.2013. The normal period for raising a demand remained one year till 27.05.2012. The appellant has raised the question of time-bar thereby raising an issue of jurisdiction. Any order passed without jurisdiction would be considered void or a nullity which is non est and of no legal effect. However, the issue in this appeal involves a question of fact and law, as it involves the determination of the 'right to use' and allegation on the non-filing of returns and evasion of duty. Hence the matter requires to be examined on merits at first. This Bench while examining a similar issue recently in **Apeejay Surendra Park Hotels Ltd. Vs Commissioner of GST & Central Excise, Chennai** [FINAL ORDER NO. 40663/2026, Dated: 02.06.2026], stated as below:

> "5.2 Since in this appeal the issue of time-bar cannot be gleaned merely from a record of the events, **a proper threefold scrutiny would be necessitated**: **first**, whether the demand is sustainable on merits; **second**, whether it falls beyond the normal period of limitation; and **third**, whether the Department has established, by cogent evidence, deliberate suppression or willful misstatement with intent to evade Service Tax. Accordingly, the merits of the demand must be examined first." (emphasis added)

4.2 We find that the common terms of the representative 'Work Order' issued by customers to the Appellant, from among a few enclosed by the appellant in their Appeal Memorandum, are as under;

Mercury Granites Pvt. Ltd.

Head Office

Factory

WORK ORDER

W.O No: MGPL/TADA/001

Date : 29.09.2011

To
M/s. EDISON GENTECH PVT. LTD,
107, Park Side Street, Nungambakkam,
Chennai – 34.
Contact no: 044-28174242, 28175203.
e-mail: edisonudayan@gmail.com
PAN NO: AABCE3059P

Service Provider.

Kind Attn : Mr. P.P.Udayan (09841070112).
Ref: Our Discussion had with you on 29.09.2011 & Quotation sent by you EG2061/11 dated 28-09-2011.

We are pleased to release our Order on you for hiring of 380 KVA genset for One month for Our Unit in Tada, Andhra Pradesh.

Sl No.	Description	Total Rs	Total p
1	Monthly Rental Charges for 380 KVA Diesel Generator set along with control panel.	60000	00
	ADD: VAT @ 14.5 %	8700	00
	TOTAL	68700	00
	Transportation, Loading & Unloading Charges for D.G Set	12000	00
	Grand Total in Rupees (Eighty Thousands Seven Hundred Rupees Only)	80700	00

TERMS & CONDITIONS:

1. The genset hiring date starts from the date of DG delivered at our factory.
2. Please deliver the DG set and commission it on or before 30-09-2011.
3. DG will be run according to the power cuts timings as per E.B Schedule.
4. Breakdowns to be attended by you immediately, any idle hours due to breakdown will not be paid. And all routine spares & service for maintenance and operation must be taken care by you. After each 250 Hrs running lubrication oil will be supplied by us for maintenance.
5. We agree for the monthly rental at the basis of 300 hours running per month beyond these hours running if any, we will pay @Rs.200/Hour.
6. Please collect the way bill from our H.O.
7. Payment Terms: Rupees 30,000 will be paid as advance to you by cheque at the time of D.G delivery at site. Remaining amount will be paid after completion of rental period against your invoice.
8. Please forward the Original Invoice to our factory address for our records.
9. The above charges are inclusive of all applicable taxes if any. Applicable TDS will be deducted
10. Bank details: Indian Bank, Branch: Uttamar Gandhi Salai, Account no: 707273465.

Invoicing Address: M/s. Mercury Granites Pvt Ltd.,
Plot No111 , IIDC (Karur Village),Near Tada Check Post .Tada 524 401(A P), India,Ph No.91-8623-272011 Fax:91-8623-272022. AP TIN No.28110112258
AP C S T No.NRE/08/3/1740 dt.5.9.02 IEC No 0801009189
Correspondence Address-Mercury Granites Pvt Ltd ,Old No 181,New No,282,Linghi Chetty Street,CHENNAI-600 001. Ph.No 044 25340061 Fax 044 25340435.E Mail purchase@gimpex.co.in , elec.tada@amplco.com, jeyaraman@amplco.com

For Mercury Granites Pvt Ltd.,

Authorized Signatory

5. The demand pertains to the period 2008-09 to 2011-12. Section 65(105)(zzzzj) of the FA 1994, which would be relevant for the period prior to 01.07.2012 defines STGU service as follows:

> "(105) "taxable service" means any service provided or to be provided, -
> (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**

> **<u>possession and effective control</u>** of such machinery, equipment and appliance.” (emphasis added)

6. The appellant has cited Circular No.334/1/2008 TRU dated 29.02.2008 in support of their submissions. Although Boards Circulars are not binding upon the Tribunal, they are binding on Departmental officers. The Hon’ble Supreme Court, in **Orient Paper Mills Ltd. Vs Union of India** [AIR 1969 SC 48], had held that no authority however high placed can control the decision of a quasi-judicial authority. However the position as further explained in **Collector Vs Dhiren Chemical Industries** [2002 (139) E.L.T. 3 (S.C.)], and by a Bench of five Hon’ble Judges in **Commissioner of Central Excise, Bolpur Vs Ratan Melting & Wire Industries** [2008-TIOL-194-SC-CX-CB], is that Board circulars and administrative instructions issued for proper administration, uniformity, and procedural standardisation are binding on departmental authorities so long as they are not inconsistent with statutory provisions or contrary to judicial interpretation. Hence once the issue is found covered by the Circular in favour of the appellant, and does not suffer from any vice as stated, the same has to be implemented. Para 4.4.3 of the Circular reads as follows:

> "4.4 Supply of Tangible Goods Services:
>
> 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). **<u>Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.</u>**
>
> 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 added)

6.1 We find that the Boards Circular does not provide any principle or rule for resolving the issue. It held that the transfer of possession and control is a question of fact and is to be decided based on the terms of the contract and other material facts. To assist the discretionary jurisdiction of the proper officer it was further stipulated that this was ascertainable from the fact whether or not VAT is payable or paid. However as stated, firstly the facts need to be found compliant with the provisions of law. Mere payment of VAT does not determine the true nature of the transaction where the contractual terms show that possession and control remained with the assessee. Otherwise, some unscrupulous assessee may discharge VAT in situations requiring the payment of Service Tax, to escape a higher incidence of the said Tax or vice versa.

7. The appellant has relied on the following Orders/ Judgments (i) **Express Engineers & Spares**; ii) **Agrawal Builders -Vs- CCE** and iii) **UFO Movies India Ltd**. as part of their submissions at the Bar. In this regard it is to be stated that not all judgment dealing with a seemingly similar issue have binding force. The primary role of a judgment is that it interprets the law. Courts do not legislate and that

is purely in the legislative domain. A decision cannot be relied upon without examining the factual situation in the appeal and how it fits the decision on which reliance is placed.

7.1 The *corpus juris* currently prevalent in India derives its historical foundation from English law. Over time, the doctrine of precedents in England has evolved to attain the status of law, transcending its original function as merely a source of law. English common law, being entirely judge-made, consists of authoritative judicial decisions that are to be adhered to consistently in subsequent cases. In this regard, it is pertinent to observe that a Full Bench of the Hon'ble Gujarat High Court, in the matter of **State of Gujarat Vs Gordhandas Keshavji Gandhi and Ors** [AIR 1962 GUJ 128], deliberated upon the interpretation of the term "law" as employed in the phrase "law in force immediately before the appointed day" contained in Section 87 of the Bombay Reorganisation Act of 1960. Hon'ble Justice Bhagwati, in his judgement, which forms part of the majority opinion, examined whether judicial precedents can be considered as law within the specified context. Relevant excerpts are provided below.

> "127. The next question to which I must address myself is whether judicial precedents can be said, to be law for it is only if judicial precedents can be regarded as law that the question would arise whether on a true construction, the words "law in force" in Section 87 include judicial precedents. Judicial precedents quite often referred to as **<u>Judge, made law</u>** but this term, though it contains a partial truth, is apt to be misleading. So far as statute law is concerned, it cannot with any reason be contended that the Judge makes law when he interprets the statute and applies it to the facts of the case before him. **<u>The law is to be found in the Statute made by the Legislature and the Judge merely ascertains the law by construing the statute according to the intent of the legislature. The Judge does no more than to gather from the language used, the intention of the Legislate and to declare what is the law enacted by the Legislature.</u>** The Judge's function is to ascertain the legislative will by interpreting the

words used in the statute and not to legislate. When the Judge interprets the statute, the Judge does net make law but merely declaims what is the law made by the Legislature and gives effect to it. The law exists in the Statute independently of the decision of the Judge and is not the product of judicial reasoning. It is therefore, entirely in appropriate in, the case of **statute law** to say that the Judge makes law when he interprets a statute enacted by the Legislature. Even in the case of **non-statute law**, the Judge's function is essentially interpretative and not legislative. His whole effort is to find the law and not to manufacture it. . .

128. There is another equally clear and effective reason which impels me to come to the conclusion that judicial precedents cannot be regarded as law. Judicial precedents are considered binding on subordinate Courts and Courts of co-ordinate jurisdiction and that is why in relation to such Court it is often said, though loosely, that judicial decisions are law. This terminology is, however, misleading and ignores the true principle underlying the binding character of judicial decisions. Judicial decisions are often loosely referred to as law due to a misconception as to the real basis of operation of judicial precedents. . . . . It is only on the principle of judicial comity and judicial decorum that judicial decisions are under certain circumstances and qua certain Courts invested with binding authority. There is no rule founded either in statute or in common law which requires implicit and unquestioning obedience to the individual precedent of another Court under any circumstances. **When a Court regards itself as bound by the individual precedent of another Court, it does so only on grounds of judicial comity and propriety**. . . . . **The evolution of the doctrine in India has been, as I have pointed out, different from the evolution in England and much of the rigidity which affects the doctrine as it prevails in England is absent in India**. This difference in the operation of the doctrine in the two countries -- which is by no means inconsiderable -- again throws into hold relief the true basis and operation of judicial Precedents and illustrates the validity of this principle based on judicial comity and judicial decorum. . . . **If judicial decisions are law, they must be binding on Courts as law and their binding effect should not depend on the insecure foundation of judicial comity and judicial decorum.** The Courts are constituted to administer law and under their constitution, they are bound to administer law as a matter of legal obligation and not as a matter of judicial propriety or comity. If, therefore, judicial decisions are law, Courts would be bound by judicial decisions and would have to give effect to the law as found in judicial decisions as a matter of legal obligation and not on considerations of judicial propriety and decorum. Law for its binding effect, cannot depend on considerations of judicial comity and decorum;

> its compulsive effect must depend on the sanction of the State. The absolute binding character of judicial precedents, however, rests as I have pointed out above, on the principle of judicial comity and decorum and they have no binding effect except by reason of what may be called comity amongst Judges. Judicial precedents thus lack the most distinctive characteristic of law and I do not see how they can be regarded as law. . .”
>
> (emphasis added)

The application of the Rule of Precedent in the Indian context, unlike that in England, is discussed below.

7.2 A **Constitution Bench** in **Padma Sundara Rao (deceased) & Ors Vs State of Tamil Nadu & others** [(2002) 3 SCC 533] held:

> "9. **Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed**. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington V. British Railways Board - (1972) AC 877. **Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases**." (emphasis added)

7.3 In **Union Of India & Anr. Vs Major Bahadur Singh** [2005 AIR SCW 6113 / 2006 (1) SCC 368], the Division Bench of the Hon'ble Supreme Court, speaking through Hon’ble Justice Arijit Pasayat, restated the rule that precedent is an authority for what it actually decides and not for what can be deduced from it. It held as under:

> “**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed**. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. **Judges interpret statutes, they do not**

interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

> "The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying Service Tax Appeal No.70472 of 2023 the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin"s speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed:

> "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament."

And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

> "**There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case**."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "**Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another.** To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."
>
> *** *** ***

> "**<u>Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it</u>**."
>
> (emphasis added)

Moreover, not every observation in a judgement of a Superior Court is binding as precedent. Only the **ratio decidendi** or the propositions of law that were necessary to decide on the issues between the parties are binding. [**Secundrabad Club Vs CIT,** 2023 SCC OnLine SC 1004 [13]; 2023 INSC 736].

7.4 The Hon’ble Supreme Court in its judgment in **Secunderabad Club** (supra), speaking through Hon’ble Justice BV Nagarathna, examined the issue of precedent and stated as under;

> “14. . . . **<u>According to the well-settled theory of precedents, every decision contains three basic ingredients</u>**:
>
> (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;
>
> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of (i) and (ii) above.
>
> For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. **<u>However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision.</u>** This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. **<u>The only thing in a judge's decision binding a party is the principle upon which the case is decided</u>** and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.”
>
> (emphasis added)

However, for completeness it is to be stated that the process of discerning the binding majority opinion from Bench judgements of plural strength, where various judges discuss the same question of law albeit differently, is a distinct one. [See: Constitution Bench judgment consisting of nine Hon'ble Judges in **Property Owners Association & Ors. Vs State of Maharashtra & Ors.** - 2024 INSC 835, dated: 05.11.2024]

7.5 As stated by the Hon'ble **Gujarat High Court in State Of Gujarat vs Gordhandas Keshavji Gandhi And Ors.** [AIR 1962 GUJ 128, Dated: 31.10.1961]:

> "40. . . . **There is no controversy as to what constitutes a judicial precedent. A judgment is not a judicial precedent. It is the principle on which a judgment is based that constitutes a judicial precedent.** When a Court answers a point of law in the form of a general principle, then judicial precedent is created. "When a question of law is answered by way of abstraction and after elimination of the immaterial elements, it becomes a judicial precedent. When such a general principle is enunciated. It is applicable not merely to the particular case in which it is enunciated, but it is applicable to all other cases which resemble that particular case in its essential features. **This is known as the ratio decidendi of the case and it is this ratio which constitutes the judicial precedent**."
>
> (emphasis added)

7.6 **Article 141 of India's Constitution** grants constitutional backing to the binding nature of law declared by the Supreme Court, however a recent judgment of the Hon'ble Supreme Court in **NBCC (India) Ltd. Vs The State of West Bengal & Ors**. [2025 INSC 54, Dated: 10.01.2025], has referred to the twin role of the Court in decision-making and precedent-making. The Bench speaking through Hon'ble Justice P S Narasimha held:

> 28. In this context, it is also important to note that, as an institution, **our Supreme Court performs the twin**

> **functions of decision-making and precedent-making**. A substantial portion of our jurisdiction under Article 136 is reflective of regular appellate disposition of decision making. **Every judgment or order made by this Court in disposing of these appeals is not intended to be a binding precedent under Article 141.** Though the arrival of a dispute for this Court's consideration, either for decision-making or precedent-making is at the same tarmac, every judgment or order which departs from this Court lands at the doorstep of the High Courts and the subordinate courts as a binding precedent. We are aware of the difficulties that High Courts and the subordinate courts face in determining whether the judgment is in the process of decision-making or precedent-making, particularly when we have also declared that even an obiter of this Court must be treated as a binding precedent for the High Courts and the courts below. **In the process of decision making, this Court takes care to indicate the instances where the decision of the Supreme Court is not to be treated as precedent.** It is therefore necessary to be cautious in our dispensation and state **whether a particular decision is to resolve the dispute between the parties and provide finality or whether the judgment is intended to and in fact declares the law under Article 141**."
>
> (emphasis added)

7.7 In this context it is also essential to note that orders/ judgments that are based on dis-similar facts; decisions based on mere assertions (*ipse dixit*); on legal provisions that are not in pari materia; those which are discretionary in nature or are passed without jurisdiction, do not have precedential value. Similarly, an *in limine* dismissal of an appeal, by the Apex Court, without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution. [See: **State of Orissa & Anr. Vs Dhirendra Sundar Das & Ors.** – Supreme Court - CIVIL APPEAL NO. 4646 OF 2019, Dated: 06.05.2018 – para 7.22]. Further, there are two well recognised exceptions to the binding force of precedent, namely, (i) *sub silentio* and (ii) *per incuriam*. A decision is *sub silentio* where a particular point of law, though logically arising, was neither argued nor considered by the Court; such decision is not an authority on that point.

[See: **Odisha State Financial Corporation Vs Vigyan Chemical Industries and Ors.** - 2025 INSC 928, Dated: 05.08.2025]. Likewise, a decision rendered *per incuriam*, i.e., in ignorance of a statutory provision or binding precedent, does not possess binding force. However, mere omission to consider some aspect of the matter, or the possibility of a different view, would not by itself render an earlier co-ordinate Bench decision per incuriam. The Rule of per incuriam has been discussed at length by a Bench of five Learned Judges in **Shah Faesal Vs Union Of India** [AIR 2020 SC 3601 / AIRONLINE 2020 SC 269].

8. While many more judgements/ citations are available on what constitutes a judicial precedent and its applicability, only a few of the leading judgements from Constitutional Courts have been cited for brevity, in the light of Orders of this Bench in **Modern Bakers (Madras) Pvt. Ltd. Vs. Commissioner of GST & Central Excise, Chennai.** [FINAL ORDER NO. 41033/2025, Dated: 23.09.2025] and **M/s. Shree Vijayalakshmi Charitable Trust, Vs Commissioner of GST and Central Excise, Coimbatore**. [FINAL ORDER Nos.40481-40482/2025, Dated:25.04.2025], relying on the Hon'ble Supreme Court's judgment in **Rashmi Metaliks Ltd. Vs Kolkata Metropolitan Development Authority,** [(2013) 10 SCC 95], wherein it was held that;

> "6. . . The sheer plethora of precedents makes it essential that this Court should abjure from discussing each and every decision which has dealt with a similar question of law. **<u>Failure to follow this discipline and regimen inexorably leads to prolixity in judgments which invariably is a consequence of lengthy arguments.</u>**
>
> 7. It is a capital exhaustion of Court time, lack of which has become critical. . ."
>
> (emphasis added)

It is essential that we embody the principles we advocate.

9. Coming to the judgments cited by the Appellant it is seen that the Tribunal's Order in the case of **Express Engineers & Spares** (supra), relates to the supply of diesel generator to customers on hire basis. The issue which came up for consideration was whether the supply of diesel generator sets to the customer would amount to STGU service. **While the terms of the work order appear similar to those in the current appeal and the Order has persuasive value, it may not be proper to adopt the precedential value of the Order *ipse dixit,* without examining and discussing the actual terms of the work order in this case.** [See: **Major Bahadur Singh** (supra)].

9.1 The Order in **Agrawal Builders** (supra), pertains to the leasing of generators. The Order relies on the singular fact that the appellant had discharged VAT in respect of right to use the DG sets. The terms of the work order and who exercised effective control over the DG sets when it remained with the customer is not discussed. While the payment of VAT can be a supportive factor, however whether the activity is covered by section 65(105)(zzzzj) of the FA 1994, has not been examined and hence is of limited value in deciding the appeal.

9.2 The judgment of the Hon'ble Supreme Court in **UFO Moviez India Ltd.** (supra), pertains to the leasing of Digital Cinema Equipment to theatre owners with effective control over it and for which Service Tax was paid, as seen from the head notes to the judgment, supplied by the Appellants counsel during the oral hearing. The CESTAT order under appeal has not been relied upon by the appellant. Apart from the facts being different there is no discussion on the merits of the issue in terms of the FA 1994. Hence the judgment operates as a final order between the parties with there being no declaration of law regarding section 65(105)(zzzzj) of the FA 1994.

10. Coming to the examining of the appeal on merits, as seen from the Apex Court judgment in **UFO Moviez India Ltd.** (supra), sale and service are mutually incompatible concepts. Section 65(105)(zzzzj) of the FA 1994, introduced with effect from 16 May 2008 by Notification No. 18/2008-S.T., levies service tax on the use of tangible goods. By contrast, a transfer of the right to use goods constitutes a deemed sale exigible to sales tax under Article 366(29-A)(d) of the Constitution. The distinction between these two concepts is well settled. In **Bharat Sanchar Nigam Ltd. Vs Union of India**, [AIR 2006 SC 1383], (**BSNL**), Learned Justice Dr. A.R. Lakshmanan, in his concurring opinion, laid down the following attributes, in para 97 of the judgment, to constitute a transaction for the transfer of right to use the goods without transferring ownership. Such an activity is classified as a "deemed sale", attracting sales tax/VAT. The core test is whether the user has effective control and possession of the goods, rather than just permissive use:

> (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.

10.1 The above formulation has since been consistently followed by the Supreme Court, including in **Great Eastern Shipping Co. Ltd. Vs State of Karnataka** [2020 (32) G.S.T.L. 3 (S.C.)]; **Commissioner of Service Tax, Ahmedabad Vs Adani Gas Ltd.**; [2020 SCC OnLine SC 682 / 2020 (40) G.S.T.L. 145 (S.C.)], and **Commissioner Vs Quick Heal Technologies Ltd.**, [2022 (63) G.S.T.L. 385 (S.C.)]. It is, therefore, clear that a transaction falls within Article 366(29-A)(d) and would be subject to Sales Tax, if the five attributes are satisfied. However, mere permission to use goods does not, by itself, amount to a transfer of the right to use; it may be no more than a licence to use.

11. On a plain reading of the sample work order reproduced at para 4.2 above along with Section 65(105)(zzzzj) of the FA 1994, and applying the tests laid down in **BSNL** (supra), we find that the transaction, in the current appeal, was not a mere service arrangement. It was, in substance, a hiring of an identified diesel generator set for consideration, with transfer of the right to use the goods, though without transfer of ownership.

11.1 The work order specifically provided for delivery of the DG set at the customer's factory and stated that the hiring period would commence from the date of delivery. The goods were, therefore, identifiable, available and capable of delivery. The description of the equipment as a 380 KVA diesel generator set with control panel also establishes consensus as to the identity of the goods.

11.2 The clauses further show that the DG set was to remain stationed at the customer's factory and to be run according to the customer's power-cut requirements. During the rental period, the customer alone had the effective right to use the generator for its business purposes. The Appellant's obligation was confined to attending breakdowns and providing routine maintenance and spares. This clearly indicates that the right to use stood transferred to the customer to the exclusion of the Appellant for the agreed period.

11.3 Once the generator was delivered and commissioned at site, the same right to use that identified equipment could not have been transferred by the Appellant to any other person during the same period. At the same time, ownership did not pass to the customer, as the Appellant continued to bear obligations consistent with ownership, including maintenance and service and the optional supply of an operator. In these circumstances, the arrangement satisfies the attributes laid down in **BSNL** (Supra) for transfer of the right to use goods and is, therefore, liable to be treated as a deemed sale.

11.4 The Appellant has produced a copy of the 'Certificate of Registration' dated 19.11.04 as a dealer, issued under 'The Central Sales Tax Act 1956' for 'used generator and generator related equipment's, using diesel' and under the 'Tamil Nadu Value Added Tax Act 2006', dated 11.01.2007. As regards service tax towards transportation charges the appellant has stated to have calculated and paid Rs. 1,35,881/- on 19.01.2013 towards duty + interest, as against the demand of duty of Rs. 68,927/-, prior to issuance of show cause notice dated 24.10.2013 and hence submitted that no proceedings were warranted on this count in terms of Section 73(3) of FA 1994. We find that the said amount is found reflected in the OIO and hence the same is accepted as settled and no further action is warranted.

11.5 Accordingly, following the attributes as stated in **BSNL** (supra), we hold that the work orders in question evidence a transfer of the right to use the DG sets by the customer without transferring ownership of the Appellant. The supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control as stipulated under Section 65(105)(zzzzj) of the FA 1994, is not seen satisfied. Hence the demand founded on the contrary assumption is therefore unsustainable. This being so the question of evasion of duty does not arise and the issue of time-bar is settled in favour of the appellant as the department in the circumstances, has failed to establish a case of wilful evasion of duty and the impugned order merits to be set aside on this score. This being so the other issues like interest and penalty etc do not survive.

Conclusion

12. On considering the issues and based on our findings the impugned order is set aside. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 23.06.2026)

(separate order)	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

Rex

Per Ajayan T.V.,

13. I have carefully considered the order recorded by my Learned Brother Shri. M. Ajit Kumar, Member (Technical). While agreeing with the final outcome recorded in paragraph 12, I would rest my decision on the facts, submissions and narration in paragraphs 1 to 5, and the analysis in paragraphs 10 to 11.5. I find the reasoning in those paragraphs acceptable and fully concur with the same.

14. The terms of the work order in the present case are materially similar to those considered in the case of Express Engineers & Spares, relied upon by the appellant. Upon a careful examination of the record, I find that the decisions of the coordinate Benches of this Tribunal in ***Express Engineers & Spares Pvt Ltd v. Commr. of CGST, Ghaziabad, 2022 (64) G.S.T.L 112 (Tri.-All)*** and ***Agrawal Builders v. CCE, Allahabad, 2019 (24) G.S.T.L 642 (Tri.-All)***, also relied upon by the appellant, squarely apply to the facts of the present case and furnish sufficient basis for deciding the appeal. I respectfully follow the said decisions as well and, to avoid prolixity, do not reproduce the relevant passages.

15. I find no material factual distinction warranting a departure from the ratio of the aforesaid decisions. Binding precedent cannot be distinguished on immaterial or peripheral differences. The decision of the Hon'ble Supreme Court in ***Official Liquidator v. Dayanand and others [2008] 15 S.C.R 331*** fortifies this position.

16. I therefore do not consider it necessary to subscribe to, or adopt, the broader discussion on the Board's circular dated 29.02.2008, judicial precedents or interpretative issues contained in the remaining portions of the order recorded by the Ld. Member (Technical). The impugned order is accordingly set aside and the appeal is allowed, with consequential reliefs, if any, in law.

Sd/-
(AJAYAN T.V.)
Member (Judicial)

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