CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51283 of 2018

[Arising out of Order-in-Original No. 14-17/SS/PR.COMM/CGST/DSC/2017-18 dated 16.01.2018 passed by the Principal Commissioner of Central Goods & Servcie Tax, Delhi South, New Delhi]

Commissioner of Central Excise, Customs,
Central Goods and Service Tax, Delhi I **...Appellant**
2nd & 3rd Floor, Engineers India Limited (Annexe Building)
Bhikaji Cama Place,
New Delhi - 110066

VERSUS

M/s. Indian Compressor Ltd. **...Respondent**
33, 35, 37, Okhla Industrial Estate,
Phase-III, New Delhi – 110020

WITH

Service Tax Appeal No. 52345 of 2018

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M/s. Indian Compressor Ltd. **...Appellant**
33, 35, 37, Okhla Industrial Estate,
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VERSUS

Commissioner of Central Excise, Customs,
Central Goods and Service Tax, Delhi I **...Respondent**
2nd & 3rd Floor, Engineers India Limited (Annexe Building)
Bhikaji Cama Place,
New Delhi - 110066

APPEARANCE:
Shri Rakesh Kumar and Shri S.K. Meena, Authorized Representative for the Department
Shri R.K. Sanghi, Senior Advocate and Shri Ambuj Ojha, Advocate for the Respondent-Assessee

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 24.04.2026
DATE OF DECISION: **12.08.2026**

FINAL ORDER NO. 51343-51344/2026

DR. RACHNA GUPTA

Present are the cross appeals filed by the department as well as M/s. Indian Compressor Ltd., the appellants to assail the Order-in-Original no. 14-17/2017-18 dated 16.01.2018. The said order was passed to pursuant to the directions issued by Hon'ble High Court of Delhi vide its order dated 31.03.2017 passed with respect to writ petition civil and civil miscellaneous application seeking rectification of mistakes in the order in original bearing no. 105/IndianComp/2016 dated 02.12.2016 which had initially adjudicated the four show cause notices. Subsequently, the present O-I-O dated 31.03.2017 has adjudicated only first SCN. The facts in brief relevant for the present adjudication are as follows: -

1.1 M/s Indian Compressors Ltd.(ICL), the assessee herein are registered with the service tax department for providing, "maintenance or Repair Services", Erection Commissioning and Installation Service". The respondents-asseessee are also engaged in manufacturer of "Industrial Air and Gas Compressor" and thus are registered with Central Excise Department also.

1.2 During the course of audit of assessee's records it was observed that the assessee had entered into "Wet Leasing Agreements" with various CNG Gas Vending Companies like Mahanagar Gas Limited, Green Gas Limited etc for compression of natural gas (CNG) at their outlets. Department observed that under these agreements the assessee was to operate and maintain compressor package and other related equipments at assessee's own cost. The skilled and trained technical manpower to operate those equipment's on 24x7 hours basis was also agreed to be provided by the respondent-assessee. The department formed an opinion that the equipments under wet lease remained under the effective control of the assessee only. Thus the activity of assessee was opined to be that of, "Supply of Tangible Goods Service"

1.3 The assessee were inquired, their financial records were demanded and the statement of the Accounts Manager of assessee namely Sh. Sunder Paul was recorded. Based on the documents and the statement, four show cause notices were issued to the assessee proposing the demand of service tax for rendering the taxable service of "Supply of Tangible Goods" during the period from 2008-09 to 2011-12 and for three consecutive subsequent financial year as tabulated below: -

S.No.	SCN No. and Date	File No.	Service Tax Demanded	Period Involved
1.	325/AE/Gr.2/ 2013-14 dated 24.07.2013	DL/ST/AE/INQ /Gr.1(2)93/09	5,44,14,472/-	2008-09 to 2011-12
2.	886/2014 Dated 15.05.2014	DL-II/ST/R-14/SCN/India Compressor/172/2013/459	Rs.47,20,193/-	2012-13
3.	5/ST/Div.VI/2014-15 dated 05.05.2015	DL-II/ST/R-14/SCN/Indian Compressor/172/2013/459	Rs.51,02,249/-	2013-14
4.	03/R-27/Div-VI/2016 dated 18.04.2016	DL-II/ST/DIV-VI/R-27/Indian Comp./SCN/14-15/32/2015	Rs.51,53,944/-	2014-15

1.4 The proposal of these show cause notices was initially confirmed vide the order-in-original no. 105/2014 dated

02.12.2016. An application seeking rectification of mistake in the said order was filed on 22.03.2017. However, the assessee has also filed writ petition no. 2960 of 2017 before Hon'ble Delhi High Court. In the said writ petition, vide order dated 31.03.2017, the High Court stayed the recovery of demands as were confirmed vide O-I-O dated 02.12.2016 and directed the said adjudicating authority to pass appropriate order on the rectification of the mistake Application of the assessee. Pursuant thereto the present order has been passed confirming the proposal only of first show cause notice dated 24.07.2013. Since there is no discussion, in the impunged order, with respect to remaining three show cause notices that the appeal has been filed by the department. The appellant has also challenged the impugned order.

2. We have heard Shri Rakesh Kumar and Shri S.K. Meena, learned Authorized Representative for the department and Shri Ambuj Ojha, learned counsel for the respondent-assessee.

3. Learned Authorized Representative of the department submitted that four of the impunged show cause notices, the proposal therein was initially confirmed vide the order-in-original dated 02.12.2016. The assessee did not file any appeal against the said order but filed an application requesting for rectification of mistake in the said order only on the ground of inaccuracy of demand calculated in the said O-I-O dated 02.12.2016. Subsequently writ petition was filed before Delhi High Court that too on the ground of seeking rectification as well as clarification with respect to calculation of the amounts as was mentioned to be submitted vide the assessee's letter dated 24.11.2016, that the

same have not been dealt with. The impunged order, despite is pursuant to High Court interim order dated 31.03.2017 in the said writ petition, however, has been passed with respect to only one (show cause notice-I dated 24.07.2013 for period of 2008-09 to 2011-12). Remaining three show cause notices for the period of 2012-13, 2013-14 and 2014-15 have not been dealt with in the impunged order. However, the findings arrived that viz-a-viz the merits of the issue involved have been reiterated by Ld. AR. It is further submitted that the said issue stand already decided by Hon'ble Delhi High Court vide order dated 04.11.2024 while dismissing the writ petition no. 2960/2017. Impressing upon that the findings of the said order are binding which pertains to four of the show cause notices. With these submissions the impugned O-I-O dated 16.01.2018 is prayed to be modified to extent of incorporating the similar findings with respect to remaining three show cause notices. The appeal is accordingly prayed to be allowed by way of remand. Ld. AR has relied upon following case laws: -

(i) Indian Compressors Ltd. Vs. Union of India reported as (2025) 32 Centax 134 (Del).

(ii) Kunhayammed Vs. State of Kerala reported as 2001 (129) ELT 11 (SC)

(iii) Bharti Cellular Ltd. Vs. Commissioner of Central Excise, Delhi reported as 206 (3) STR 423 (Tri-Del)

(iv) Aircell Digilink India Ltd. Vs. Commissioner of Central Excise, Jaipur reported as 2004 (173) ELT 31 (Tri.-Del.)

(v) Andhra Pradesh State Electricity Board Vs. Collector of Central Excise, Hyderabad reported as 1984 (16) ELT 579 (Tri.-Del.)

(vi) Intercape Vs. Collector of Central Excise, Mumbai-I reported as 2006 (198) ELT 275 (Tri.-Del.)

(vii) Mercantile Company Vs. Collector of Central Ex., Calcutta reported as 2007 (217) ELT 275 (SC)

(viii) Grauer & Weil (India) Ltd. Vs. Collector of Central Excise, Baroda

3.1 Ld. Counsel for the assessee, on the other hand, submitted that the service tax is not leviable on the impunged activity of the assessee i.e. leasing of the equipment's / compressor package. The activity rather amounts to be sale of goods. The definition of section 2(2) of the Sale of Goods Act, 1930. According to which "Delivery" means voluntary transfer of possession of goods from one person to another. Section 33 of the Act was also impressed upon which defines delivery of goods sold to mean putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf.

3.2 Ld. Counsel further submitted that a legal right of possession as given by the assessee to the Gas Companies for a specified period with respect to the Compressor / Equipment and the assessee had no right to take back the compressor / equipment during the contract period. This activity gets clearly covered under the meaning of delivery which is synonymous to sale / deemed sale of Article 366 (29A) (d) of Constitution of India. The activity is wrongly alleged to be taxable under section 65(105) (zzzzj) of Finance Act 1994for the period till 30.06.2012. For the subsequent period in question(till march 2015). The activity is wrongly alleged taxable under section 65B (44) (a) of Finance (Amendment) Act 2012.

3.3 It is submitted that the possession as well as the effective control of such machinery in question was duly transferred to the lessees / gas companies. Ld. Counsel for the assessee has relied upon the decision of the Hon'ble Supreme Court in the case of **Bharat Sanchar Nigam Limited and Anr. Vs. Union of India and others reported as 2006 (2) SCR 823.**

3.4 Ld. Counsel for the assessee further submitted that the assessee was paying Sales Tax pursuant to the adjudication order passed by Commissioner of Sales Tax, Bombay as well Commissioner of Sales Tax of NCT of Delhi, that too, to the knowledge of the department. Even the Sales Tax Returns were also provided to the department. The question of claiming service tax thereon does not arise. The decision of Hon'ble Supreme Court in the case of **Commissioner of Service Tax-V, Mumbai vs. M/s UFO Moviez India Ltd. in Civil Appeal No. 181 of 2022.**

3.5 Ld. Counsel laid heavy emphasis upon the time bar issue. It is submitted that the department was fully aware since the year 2009 that the assessee is paying sales tax under proper adjudication order of Commissioner of Sales Tax on the Wet Leases in question. The copies of those orders as well as the agreement / contracts executed with the Gas Companies were provided to the appellant/ department in the year 2010 and 2011 itself still the first show cause notice was issued in the 2013. The remaining three show cause notices were issued when one show cause notice was already issued to the assessee. In such circumstances there arises no possibility of any fraud or collusion or willful misstatement or suppression of facts on part of the respondent-assessee. No evidence is produced by the department / appellant to prove that the respondent-assessee had intent to evade payment of service tax. In the given circumstances the invocation of extended period is not applicable to the facts of the present case. The impugned order is liable to be quashed and to be set aside. Ld. Counsel relied upon the decision in case of **Tarun Gupta vs. Commissioner of Excise, Service Tax decided by the Principal Bench of this Tribunal vide judgement dated 04.12.2024 in Appeal No. 50544 of 2017.** In the said decision the tribunal has discussed several decisions on Supreme Court as in the case of **Anand Nishikawa Company Limited vs Commissioner of Central Excise, Pushpam Pharma Ceutical Company Vs Collector Central Excise, Bombay reported as 1995 Supplt. (3) SCC 462, Uniworth Textile Ltd. Vs. Commissioner of Central Excise, Raipur reported as 2013 in (288) ELT 161 SC.** With these submissions the present is prayed to be dismissed.

4. Having heard the rival contentions, perusing the entire records it is observed that the issue in the present appeal is about liability of Indian Compressor Ltd.-assessee to pay Service Tax in respect of their activities / execution of Wet Lease Agreements during the period 2008-09 to 2014-15. As per department-

appellant the said activity is "Supply of Tangible Goods" defined under Section 65(105) (zzzzj) of Finance Act 1994 for the period of 2008 to June 2012 / Section 65B (44) (a) of Finance Act, 2012 for the period of July 2012 to March 2015. Accordingly the department has demanded the service tax vide four show cause notice on such amount for such period as mentioned in the table above. The assessee, however, have been treating the said activity as "Transfer of Property" and were discharging the Sales Tax Liability and thus have denied the service tax liability as confirmed under the impugned order. Hon'ble High Court of Delhi vide order dated 04.11.2024 has observed as follows:

> ***"(i) Gujarat Adani Energy Ltd. (GAEL)***
>
> *"Wet leasing of booster Compressors"*
>
> *"...we are pleased to award you the Work Order for Wet Leasing of 2 nos. of booster compressors with 2 nos. of dispensers as per the agreements terms and conditions jointly signed by GAEL and ICM authorized signatory.*
>
> *2. Contractor's Scope of work: -*
>
> - *Delivery of booster along with dispenser at M/s Neelu Motors & Mitesh near APMC CNG refueling stations.*
> - *The supplier shall bear the transportation cost & octroi incurred from the suppliers end to the said destination.*
> - *The supplier shall install and commission the booster compressor & dispense at his cost.*
> - *The operation and maintenance of compressor as well as dispensers shall be carried out by the supplier at his cost*
> - *The supplier has to ensure the availability of booster compressor for operation as per the international practices and work like a prudent and reasonable operator.*
> - *Labour cost of Installation of tubing shall be borne by the supplier*

- *All electrical termination work to be done by the supplier at his cost*
- *The contractor shall manage and arrange spare parts and consumables required for O&M of booster compressor and dispenser on their cost.*
- *Terms of payment. On submission of invoice duly approved by the officer-in-charge.*

(Gas Authority of India Ltd. (GAIL)

"Wet Lease of 3 (three) Nos of CNG Daughter Booster Compressors in Baroda for Gail.

...we (GAIL) are pleased to issue this firm Purchase Order on you (hereinafter referred us "Lessor") for wet leasing compressors for Blue Sky Project of GATL in the following terms & conditions:-

1.0 <u>Brief Scope of Work</u>

a. Under Wet lease, supply, Installation and commissioning of 3 (three) nos. of CNG Compressors including supply and installation of the relevant equipment such as capacitor Bank, MCB, UPS etc. and supply of all types of cables and laying for commissioning of outlet at the proposed locations in Baroda.

b. Operation & maintenance of the CNG Compressors at lessor's own cost.

c. To provide adequate no. of qualified, skilled and trained engineers and technical manpower to operate and maintain the CNG Compressors and also to take necessary precautions to ensure safety of the system.

d. To carry out the regular preventive maintenance of CNG compressors installed as per the schedule.

e. All high pressure components such as pressure vessels, cylinders, tubes etc. shall be periodically tested and all pressure gauges, switches, relief valves, gas detectors etc. installed on CNG Compressors shall be periodically calibrated as per the norms by the lessor at his own cost.

5.0 <u>Taxes, Duties & levies</u>

The unit rates indicated in enclosed Annexure-I are inclusive of all taxes & duties ***<u>including Service Tax @ 8%</u>*** *[emphasis supplied], GAIL shell deduct Income tax at source.*

8.0 <u>Payment Terms</u>

The lessor shall raise bills to GAIL on monthly basis and payment to the lessor shall be made within 15 days of receipt of bills. The monthly billing shall be made as per average derived slab.

For the certification of monthly bills, the lessor shall also submit a separate statement giving the station wise log book on breakdowns, non-availability of equipments for that month. This statement shall be duly signed by the SIC.

4.1 All the six Wet Leases have been discussed in detail by the adjudicating authority in the initial O-I-O dated 28.11.2016 (the order is with respect to four of impunged show cause notices). It has been observed from those agreements / wet leases that the Supplier / Lessor / assessee agreed to install and commissioned the CNG Compressor and relevant equipment's including Booster Compressor, Dispenser, Capacitor, Bank, MCB, UPS etc at respondent's own cost. The maintenance thereof was also agreed to be carried out by the respondent at respondent's cost. The compressor / equipment's were to be operated by adequate number of qualified, skilled, trained engineer and technical manpower of the respondent / lessor.

5. Thus it is cleared that the assessee was in possession and was exercising the effective control over the compressor / equipment leased to its customer. It stands clear that the Wet Lease agreement executed by the assessee amounts to an activity taxable in the category of Supply of Tangible Goods Service. The

assessee is rightly held liable to pay service tax for rendering said activity during the period 2008-09 to June 2012. Though assessee had relied upon Article 366 (29A) of Constitution of India, Subclause (d) thereof. The said sub-clause read as follows:

> *"(d) 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;"*

Hon'ble Delhi High Court while finally deciding writ petition of the appellant bearing no. 2960/2017 about rectification of mistake in initial O-I-O dated 02.12.2016 has held as follows:

> *"10. Having gone through the aforesaid terms and conditions of the contracts, we find that the petitioner supplied the goods viz. compressors, boosters etc. and other related equipment and necessary manpower to operate and maintain the said equipment for the service receivers. The terms and conditions reveal that the petitioner retained possession and exercised effective control and management over such compressors etc. supplied to their customers.*
>
> *11. The services rendered by the petitioner therefore fulfil the criteria to be taxable under the category of 'supply of tangible goods', since the equipment was supplied by the petitioner to the service receivers while retaining control over the equipment and without handing over the possession to the service receivers. In this regard, the Commissioner observed as under:*
>
> > *"70. (a) On carefully sifting through the said agreements I find that aforesaid agreements are of wet leasing of CNG Compressors package or Daughter Booster Compressor or Suction Pressure Hydraulic Booster or Compressed Air Generating Unit and Dispensers & other related equipments. The scope of work delineated in. the above contracts show that the Noticee will not only supply, install & Commission the required number of booster compressors on hiring basis at the designated CNG Stations but they are also responsible for operation & maintenance including replacement of spares and*

> *any other requirement to run the compressor. Further, to operate and maintain the CNG Compressors it is the responsibility of the Noticee to provide adequate number of skilled and trained engineers including technical support manpower to ensure seamless operation of the outlets/machines/on! inc stations or daughter booster stations as the case may be. Thus, the Noticee was in possession and has exercised effective control over such compressors etc supplied to their customers. Therefore, there is no iota of doubt that the wet lease agreements for leasing the compressors and other equipments is a service falling under the taxable category of Supply of Tangible Goods Service. Transfer of right to use any goods is leviable to Sales Tax/VAT as deemed Sale of goods. Transfer of right to use involves transfer of both possession and control of goods to the user of goods. However, in the instant case, going through the various provisions of the agreement, it is evident that there is no transfer of right to use as features of command, domination, regulation etc. is very much in the hands of the noticee. Thus effectively, if the lessee has been provided with control of use of goods it will tantamount to transfer of right to use of goods and service tax will not be chargeable. However, in this case there is a transaction of another person to use the goods without giving legal right of. possession and effective control and hence has to be treated as service."*

In view of these observations, we do not find any infirmity in the order under challenge while demand of service tax has been confirmed though with respect to one show cause notice.

6. We now discuss the plea of "Time Bar", as raised by the assessee, we observe from assessee's own plea that the maximum period from the date of knowledge of the department about the assessee's activity has gone in seeking one or the other document and the clarification from the assessee. As already discussed above, the assessee had agreed to be in effective control of the compressor/ equipment leased out by the assessee by providing

continuous operators / manpower of those equipment and by maintaining them at their own cost neither the possession nor the effective control was transferred by the respondent-assessee. Since there is no ambiguity in the contract in question and there has been statutory provisions inviting service tax liability for the transaction where the possession and effective control has not been transferred, the ignorance of such statutory provisions / law is not an excuse available to the respondent-assessee.

7. The department has also time and again being clarifying the scope of supply of tangible goods for use. One such circular is 334/1/2008-TRU dated 29.02.2008 i.e. immediatly prior the period in dispute. Ignoring such statutory provision can have only one outcome i.e. the intent to evade the tax liability. Though the appellant has impressed upon the discharge of sales tax liability by them. But Hon'ble High Court in decision dated 04.11.2024 has held that "Mere fact that the assesse had discharged purported liability arising under Sales Tax Legislation or based upon a misinterpretation of contractual covenants by sales tax authorities could not absolve of service tax liability in terms of Section 65 (105) (zzzzj).

8. Further it is observed that the conduct of assessee representative before this tribunal also has been that of misstatement and suppression of facts as has been observed in the miscellenous order no. 51126 / 225 dated 19.11.2025 where it was concealed that judgement of Delhi High Court dated 04.11.2024 has not been stayed by Hon'ble Supreme Court vide order dated 21.02.2025. In the light of the entire above discussion we hold the

extended period has rightly been invoked while issuing the impugned show cause notices.

9. We further observe that the remaining three show cause notices have been adjudicated vide the initial O-I-O dated 02.12.2016. Even Hon'ble High Court Delhi has affirmed those findings while reliing upon Section 65B (44) (a) of the Finance Act for the period post July 2012. The said section read as follows :

> "65 (*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*) a transaction in money or actionable claim;"

10. Article 366 (29A) of the Constitution of India is already held not applicable to the given circumstances. The transfer, delivery or supply of goods other than those which can be viewed as deemed sale by virtue of said article 366 amounts to Taxable Service in light of the aforesaid section 65B (44) of the Finance Act. From the above discussion it stands clear the proposal of all four impugned show cause notices was got confirmed in the year 2016 itself. The assessee had not challenged the said confirmation except an application seeking rectification in the said order only with respect to calculation of demand confirmed therein was filed, alongwith writ petition on the same cost. The said writ petition stands finally decided vide order dated 04.11.2024 upholding the findings of O-I-O dated 02.12.2016 i.e. upholding the confirmation of demand proposed under four of the show cause notices. The High Court

directed the adjudicating the authority to consider the application seeking the rectification of mistake as was filed by the assessee. Thus the order passed pursuant to those directions is an order which gets merged with O-I-O dated 02.12.2016. The decision of Hon'ble Delhi High Court upholding the said order of 2016 is binding. Resultantly it is held that the impunged O-I-O dated 17.01.2018 is to be held as part and parcel of earlier O-I-O no. 105/IndianComp/2014 dated 02.12.2016. Finding no infirmity therein rather those findings been confirmed by Hon'ble High Court of Delhi, we hereby dispose off the appeal filed by the department in above terms. The appeal filed by the assessee stands accordingly dismissed.

[Order pronounced in the open court on **12.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

HK