CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. III

Date of hearing: 12.12.2017
Date of pronouncement: 10.01.2018

S. T. Appeal Nos. 51947 to 51950 of 2014 with
ST/C.O/ 51124, 51148, 51149 & 50701/2015
(Arising out of order in original No. 167 – 170/GB/2013 dated 29.11.2013 passed by the Commissioner, Service Tax, New Delhi)

CCE&ST, New Delhi Appellant-Revenue

Vs.

M/s Lease Plan India Limited Respondent-assessee

Appearance:

Sh. Amresh Jain, AR for the Revenue

Sh. V. Venkataraman, Sr. Advocate & Sh. S. K. Gupta, Advocate for the Respondent-assessee

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 50113 – 50116/2018

Per: **B. Ravichandran**:

These four appeals are by the Revenue against a common impugned order dated 29.11.2013 of Commissioner of Service Tax, New Delhi.

2. Brief facts of the case are that the respondent-assessee are engaged in business of financial as well as operating lease of vehicles. They were registered with the Service Tax Department and were paying service tax under the category of Banking and Other Financial Services (BOFS) in terms of Section 65(12) read with Section 65(105)(zm) of the Finance Act,

1994. The respondent-assessee is paying service tax at the applicable rate on the consideration received in pursuance of financial lease arrangement. The dispute in the present proceedings are with reference to their business in operating lease with reference to motor vehicle given to the clients. The respondent –assessee procured orders from their clients and after verification entered into a lease agreement with them. The respondent thereafter sent quotation for different type of vehicles as required by the clients and on confirmation of the requirements order for the vehicle to be supplied. The Revenue entertained a view that the terms and conditions governing both types of leases, namely financial lease and operating lease are similar and as such the consideration received in such business transaction is liable to be taxed under BOFS.

3. Accordingly, proceedings were initiated against the respondent –assessee by issue of various show cause cum demand notices covering the period 2004-05 to 2011-12. A total demand of Rs. 24,39,00,455/- was issued against the respondent-assessee. The respondent-assessee contested the demand and filed their defence submissions. The case was adjudicated by the Original Authority resulting in the impugned order. The Original Authority dropped the proceedings initiated through four show cause notices covering the above period. He held that there is a clear distinction between financial lease and operating lease agreement entered into by the respondent-assessee. Accordingly, it was held that activities undertaken by the respondent –assessee as per operating lease agreement are not covered by the tax entry BOFS. The service tax demand was dropped on this basis. The Revenue preferred these appeals against this order.

4. Ld. AR appearing for the Revenue elaborating the grounds of appeal submitted that the activities of the respondent-assessee are covered by the tax entry BOFS. In terms of the agreement, the lessee pays the maintenance charges, insurance and all taxes. Accordingly, the arrangement is for financial lease only. Referring to the observation of Hon'ble Supreme Court in the case of ***Association of Lessee and Financial Service Companies -2010 (20) STR 417 (SC***). Ld. AR submitted that a financial lease transfers all risks and reward incidental to ownership, even though the title may or may not be eventually transferred to the lessee. Financial lease is a financial loan from the lesser to the lessee. On the other hand, operating lease is a lease other than financial lease. In the present case, the Revenue contended that the respondent-assessee fulfils the requirement of financial lease and the criteria of Accounting Standard AS-19 has to be examined to arrive at a correct categorisation of lease arrangement. It is the case of the Revenue that what is claimed to be operating lease arrangement is actually a financial lease, liable to service tax.

5. Ld. Sr. Counsel appearing for the respondent-assessee supported the findings recorded in the impugned order. He submitted that to appreciate the scope of service tax levy vis-a-vis the sales tax levy with reference to lease transaction it is necessary to appreciate the legislative history as well as various decided cases of the Hon'ble Supreme Court. Service tax was introduced w.e.f. 01.03.1994 under Entry 97 List-I of Seventh Schedule of the Constitution, by the Central Government. The Apex Court in the first ***Gannon and Dunkerley case AIR 2958 SC 560*** held that sale would mean '*nomen juris sale*' which requires outright transfer of goods by one person

to another for a consideration. That absolute sale alone can be taxed by the State Government under Sales Tax. Later in ***K. L. Johar and Co. vs. DCTO -1965 2 SCR 112 (SC)*** the Apex Court held that Sales Tax can be levied on hire purchase transactions resulting in sale but only to that extent of sale price which will be the last instalment of payment. The Apex Court held that there is a sale only when the purchaser exercise such option to purchase which is at a later date and therefore the depreciated value of goods involved in such transaction would be assessable to sales tax. Hon'ble Madras High Court in ***A.V. Meiyappan vs. Commissioner of Commercial Tax – 1967 (20) STC 115 (Mad***.) held that there is a sale only when ordinary commercial sale requiring absolute transfer of ownership can be taxed under Entry 54 List-II of the Constitution. 46th amendment of the Constitution introduced the concept of deemed sale and 6 transactions were brought in the ambit of sale in terms of Article 366(29A). The Apex Court in ***20th Century Finance Corporation Ltd. vs. State of Maharashtra -2000 (6) SCC 12*** examined the leasing and the lease transactions under Article 366(29A) (d) of the Constitution.

6. Ld. Counsel further elaborating the evolution, the concept of lease arrangement submitted that such lease transactions are broadly classified into two categories, namely, financial lease and operating lease. He further submitted that financial lease which will also include hire purchase finance, is nothing but a loan transaction, advancement or assistance through funds for procurement of assets. Under financial lessee, the lessee is the owner of the asset and depreciation under Section 32 of the Income Tax Act, 1961 is claimed by him. The lesser cannot book or register these assets as they

belong to or eventually get owned by the lessee. The Chartered Accountant Institute revised the Accounting Standards 19 mandating the lesser to book the loan amount as only 'receivables' alongwith interest and the lessee, the actual or eventual owner to capture their assets in their books and also claim depreciation. On the contrary, when it comes to an operating lease, the assets are owned by the lesser and these are handed over to the lessee for a temporary period for their use. Accounting Standards 19 therefore mandates that in the case of operating lease, the lesser should capture the assets in their books and depreciation should also be claimed by the lesser only.

7. Ld. Counsel submitted that there are essentially three fold distinction between a financial lease and operating lease:

(a) In a financial lease, the asset is owned or eventually owned by the lessee. The arrangement therefore is a simple loan arrangement as a lease finance. On the contrary, in the case of operating lease, the assets are owned by the lesser and the lessee has only the right to use the goods on payment of rentals or hire charges.

(b) In the case of a financial lease in terms of Accounting Standards 19, it is the lessee, the owner or eventual owner who is allowed to capture the assets in their books. The lessee is also allowed to claim depreciation. The lesser has to show this as a loan transaction and the funded amount (Principal + Interest) only as receivables. Lesser cannot take its assets into its books. On the contrary in the case of an Operating Lease lesser is the owner and therefore allowed to capture the assets in their books. The income realised from the lessee has to be booked as lease or rental or hire charges.

(c) When it comes to claiming depreciation under Section 32 of the Income Tax Act, Accounting Standards 19 prescribe that in the case of a financial lease, since the lessee is the owner or an eventual owner, the assets should be depreciated only on the books of the lessee. On the contrary, in the case of an operating lease, since the assets are owned by the lesser, depreciation can be claimed only by the lesser.

8. Apart from the above, any financial lease, as the lessee is the owner or the eventual owner the lease, would normally be covering the economic life of the asset. The total cost of the vehicle alongwith interest would stand covered. In operating lease, since the income is in the form of rental and not sale of assets, 60% to 80% of the value is collected as rentals and the balance amount is normally recovered after the expiry of lease period by way of sale for the residual nominal price.

9. Ld. Counsel appearing for the respondent-assessee elaborately referred to the various decisions of the Hon'ble Supreme Court on lease arrangement and the ratio laid down by the Apex Court on financial lease versus operating lease. He referred to the decisions in ***Asia Brown Bovery Ltd. vs. Industrial Corporation of India and Others -2004 (12) SCC 570*** and ***Association of Leasing and Financial Service Company vs. Union of India -2010 (20) STR 417 (SC)***.

10. Contesting specific grounds raised by the Revenue in their appeal, ld. Counsel submitted that the Revenue is not correct in their submission that the respondent fulfilled all the criteria for a financial lease in the impugned transactions. The respondent –assessee fulfilled the essential criteria for categorisation under operating lease being not the owner of the asset. The requirement of financial lease is not met. The presumption of the Revenue that the insurance is taken in the name of lessee and as such they alone are the owner is not supported by the facts. In fact, such contention by Revenue is contrary to their own assertion. If lessee is the owner, there is no need to sell assets post the lease period. It is the common fact that in operating lease after expiry of the lease period, the assets are sold through bidding process. In a financial lease assets and their ownership is identified to the lessee who alone depreciates the said assets. In any case, ld. Counsel submitted that taking insurance or bearing incidental are not criteria covered in AS 19 to decide the ownership. It is not disputed that the respondent-assessee collected only lease rental and the assets are put up for sales post lease period through a bidding process as per the agreement. It is not open to the Revenue to assume the transaction to be a financial lease.

11. We have heard the ld. AR and the ld. Sr. Counsel at length and perused their written submission, filed after the hearing. We have also carefully considered the impugned order. We note that the impugned order has examined the issue elaborately by extensively referring to the terms of agreement, Accounting Standard 19 issued by the Institute of Chartered Accountants and the legal provision under Finance Act, 1994 relevant to the present dispute. We note that the whole dispute is with reference to

categorising the lease arrangement either as "Financial lease" or "Operating lease". The following facts are admitted and are not in dispute:

(a) The appellants are engaged in providing both financial and also operating leases based on the requirement of the client.

(b) Appellants have paid VAT or Service Tax in respect of these services under BOFS for financial lease and VAT in respect of operating leases.

(c) The respondent –assessee would have paid much lesser service tax on operating leases in case the same are subjected to service tax as financial lease. They are discharging much higher quantum of VAT by paying tax as operating leases.

(d) Accounting Standard 19 should be examined and applied in order to arrive at correct nature of the lease arrangement.

12. We note that the Commissioner after examining the Board's clarification dated 09.07.2001, referring to AS-19 and Supreme Court decisions finally arrived at the conclusion that the respondent are not liable to pay service tax on operating lease arrangement.

13. In ***Association of Leasing and Financial Service Company*** (supra), the Apex Court observed as below-

> ***"18.*** *The Institute of Chartered Accountants of India (ICAI) has also issued AS-19 "Accounting for Leases". It is mandatory in respect of financial leases executed on or after April, 2001. It inter alia provides for capitalization of finance lease assets in the books of the lessee instead of lessor. The lessor [NBFC] is required to show the assets leased only as receivables in its balance sheet instead of as fixed assets. The implication of the above AS-19 for the NBFC prescribed by RBI vide amendments to the 1998 Directions is that all financial leases would now be accounted like hire-purchase transactions [See Manual of NBFCs 9th Edition Page 268]. Similarly, under the RBI Guidelines dealing with accounting for investments, NBFCs having not less than 60% of the total assets in lease and hire purchase and deriving not less than 60% of their total income from such activities*

can be classified as hire purchase/equipment leasing companies. All these circulars and guidelines issued by RBI are relied upon only to show that equipment leasing and hire-purchase are activities undertaken as business by NBFCs which are regulated as para banking activities by the RBI under the provisions of the 1934 Act. They are regulated not only to protect depositors but also customers [See Section 45-I(c)(iii)(i)]. The above activities are financing activities encompassed under Section 45-I(c)(i) which in turn constitutes "rendition of services to its customer(s)" which is the taxable event under Section 65(105)(zm) of the Finance Act, 1994 (as amended). Apart from NBFCs, even banks through their subsidiaries with the approval of RBI can undertake equipment leasing, hire-purchase business and financial services. These are not direct lending activities. However, RBI treats them as services or facilities. The financial facilities are extended by way of equipment leasing or hire-purchase finance subject to approval of RBI [See Taxmann's RBI Instructions for Banking Operations 7th Edition page 224].

19. *The significance of the above circulars and guidelines is to show that the activities undertaken by NBFCs of equipment leasing and hire-purchase finance are facilities extended by NBFCs to their customers; that, they are financial services rendered by NBFCs to their customers and that they fall within the meaning of the words "banking and other financial services" which is sought to be brought within the service tax net under Section 66 of the Finance Act, 1994. One more aspect needs to be highlighted. With the application of AS-19, the leased assets are required to be shown as "receivables" and not as fixed assets which further shows that equipment leasing and hire-purchase finance are financial facilities which thereby funds projects presented by the customers to banks and other financial institutions including NBFCs. Thus, the impugned tax is levied on these services as taxable services. It is not a tax on material or sale. The taxable event is rendition of service. Hence, the impugned tax is different and distinct from tax on sale of goods under Entry 54 List II of the VIIth Schedule to the Constitution.*

20. *According to Sale of Goods Act by Mulla [6th Edition] a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option to purchase, i.e., to say that the owner lets out the chattel on hire and undertakes to sell it to the hirer on his making certain number of payments. If that is the real effect of the agreement there is no contract of sale until the hirer has made the required number of payments and he remains a bailee till then. But some so-called hire-purchase agreements are in reality contracts to purchase, the price to be paid by instalments and in those cases the contract is a contract of sale and not of hiring. It depends on the terms of the contract whether it is to be regarded as a contract of hiring or a contract of sale. A hire-purchase agreement partakes of the nature of a contract of bailment with an element of sale added to it. However, if the intention of the financing party in obtaining the hire-purchase and the allied agreements is to secure the return of the loan advanced to its customer the transaction would be merely a financing transaction. [See page 75]. The point which needs to be re-stated is that the funding activity undertaken by the financing party which could be in the form of loan or equipment leasing or hire-purchase financing, would be exigible to service tax if such activity falls in the category of "banking and other financial services" under Section 65(12) of the Finance Act, 1994. The financial transaction was earlier out of the tax net. In the process there are two different and distinct transactions, viz., the financing transaction and the equipment leasing/hire-purchase transaction. The former is exigible to service tax under Section 66 of Finance Act, 1994 (as amended) whereas the latter would be exigible to local sales tax/VAT. Funding or financing the transaction of equipment leasing and hire-purchase* *covers two different and distinct transactions. The activity of funding or financing by NBFC who is in the business of financing by giving loans, or equipment leasing or hire-purchase finance falls in the category of financial services rendered by NBFCs to their customers. It is an activity in relation to the hire-purchase or lease transaction. In this connection, as and by way of illustration we need to give an illustration which brings out the distinction between a "finance lease" and "operating lease". A finance lease transfers all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee. In the case of "finance lease" the lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets. In substance, finance lease is a financial loan from the lessor to the lessee. On the other hand an operating lease is a lease other than the finance lease. Accounting of a "finance lease" is under AS-19, which as stated above, is mandatory for NBFCs. It is a completely different regime. According to Chitty on Contract, a hire-purchase agreement is a vehicle of instalment credit. It is an agreement under which an owner lets chattels out on hire and further agrees that the hirer may either return the goods and terminate the hiring or elect to purchase the goods when the payments for hire have reached a sum equal to the amount of the purchase price stated in the agreement or upon payment of a stated sum. The essence of the transaction is bailment of goods by the owner to the hirer and the agreement by which the hirer has the option to return the goods at some time or the other [See para 36.242, 36.243]. Further, in the bailment termed "hire" the bailee receives both possession of the chattel and the right to use it in return for remuneration to be paid to the bailor [See para 32.045]. Further, under the head "equipment leasing", it is explained that it is a form of long-term financing. In a finance lease, it is the lessee who selects the equipment to be supplied by the dealer or the manufacturer, but the lessor [finance company] provides the funds, acquires the title to the equipment and allows the lessee to use it for its expected life. During the period of the lease the risk and rewards of ownership are transferred to the lessee who bears the risks of loss, destruction and depreciation or malfunctioning. The bailment which underlies finance leasing is only a device to provide the finance company with a security interest [its reversionary right]. If the lease is terminated prematurely, the lessor is entitled to recoup its capital investment [less the realizable value of the equipment at the time] and its expected finance charges [less an allowance to reflect the return of the capital] [para 32.057]. In the case of hire-purchase agreement the periodical payments made by the hirer is made up of :*

(a) consideration for hire
(b) payment on account of purchase.

21. *To sum up, NBFCs essentially are loan companies. They basically conduct their business as loan companies. They could be in addition thereto in the business of equipment leasing, hire purchase finance and investment. Because NBFCs are basically loan companies, they are required to show the assets leased as "receivables" in their balance sheets. That, the activities of hire-purchase finance/equipment leasing undertaken by NBFCs come under the category of "para banking". That, in substance a finance lease, unlike an operating lease, is a financial loan (assistance/facility) by the lessor to the lessee. That, in the bailment termed "hire" the bailee receives both possession of the chattel and the right to use it in return for remuneration. On the other hand, equipment leasing is long term financing which helps the borrower to raise funds without outright payment in the first instance. Here the "interest" element cannot be compared to consideration for lease/hire which is in the nature of remuneration (consideration) for hire. Thus, financing as an activity or business of NBFCs is different and distinct from operating lease/hire-purchase agreements in the classical sense. The elements of the finance lease or loan transaction are quite different from those in equipment leasing/hire-purchase agreements* *between owner (lessor) and the hirer (lessee). There are two independent transactions and what the impugned tax seeks to do is to tax the financial facilities extended to its customers by the NBFCs under Section 66 of the 1994 Act (as amended) as they come under "banking and other financial services" under Section 65(12) of the said Act. "The finance lease" and "the hire-purchase finance" thus squarely come under the expression "financial leasing services" in Section 65(12) of the Finance Act, 1994 (as amended)".*

14. The Apex Court further held –

"37. *Applying the above decisions to the present case, on examination of the impugned legislation in its entirety, we are of the view that the impugned levy relates to or is with respect to the particular topic of "banking and other financial services" which includes within it one of the several enumerated services, viz., financial leasing services. These include long time financing by banks and other financial institutions (including NBFCs). These are services rendered to their customers which comes within the meaning of the expression "taxable services" as defined in Section 65(105)(zm). The taxable event under the impugned law is the rendition of service. The impugned tax is not on material or sale. It is on activity/service rendered by the service provider to its customer. Equipment Leasing/Hire-Purchase finance are long term financing activities undertaken as their business by NBFCs. As far as the taxable value in case of financial leasing including equipment leasing and hire-purchase is concerned, the amount received as principal is not the consideration for services rendered. Such amount is credited to the capital account of the lessor/hire-purchase service provider. It is the interest/finance charge which is treated as income or revenue and which is credited to the revenue account. Such interest or finance charges together with the lease management fee/processing fee/documentation charges are treated as considerations for the services rendered and accordingly they constitute the value of taxable services on which service tax is made payable. In fact, the Government has given exemption from payment of service tax to financial leasing services including equipment leasing and hire-purchase on that portion of taxable value comprising of 90% of the amount representing as interest, i.e., the difference between the instalment paid towards repayment of the lease amount and the principal amount in such instalments paid (See Notification No. 4/2006 - Service Tax dated 1-3-2006). In other words, service tax is leviable only on 10% of the interest portion. (See also Circular F.No. B.11/1/2001-TRU dated 9-7-2001 in which it has been clarified that service tax, in the case of financial leasing including equipment leasing and hire-purchase, will be leviable only on the lease management fees/processing fees/documentation charges recovered at the time of entering into the agreement and on the finance/interest charges recovered in equated monthly instalments and not on the principal amount). Merely because for valuation purposes inter alia "finance/interest charges" are taken into account and merely because service tax is imposed on financial services with reference to* *"hiring/interest" charges, the impugned tax does not cease to be service tax and nor does it become tax on hire-purchase/leasing transactions under Article 366(29A) read with Entry 54, List II. Thus, while State Legislature is competent to impose tax on "sale" by legislation relatable to Entry 54 of List II of Seventh Schedule, tax on the aspect of the "services", vendor not being relatable to any entry in the State List, would be within the legislative competence of the Parliament under Article 248 read with Entry 97 of List I of Seventh Schedule to the Constitution.*

38. *According to Mr. Arvind Datar and Mr. K. Parasaran, learned counsel appearing on behalf of some of the appellants, once the subject matter of hire-purchase and leasing is constitutionally characterized as a sale (deemed sale) by the Constitution (Forty-sixth Amendment) Act, the said subject matter can be taxed only under Entry 54, List II and it cannot be taxed under Entry 97, List I. According to the learned counsel, the object behind enactment of the Constitution (Forty-sixth Amendment) Act was to reserve the exclusive competence to tax hire-purchase transactions with the State Legislature and exclude the Parliament from the legislative sphere. In support of the above contentions, learned counsel placed reliance on para 44 of the judgment of this Court in the case of Bharat Sanchar Nigam Limited (supra), the relevant portion of which is quoted hereinbelow :*

> *"44. Of all the different kinds of composite transactions, the drafters of the Forty-Sixth Amendment chose three specifications, a works contract, a hire-purchase contract and a catering contract to bring them within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time."*

39. *Emphasizing the underlined words, the learned counsel contended that a hire-purchase does not involve a sale and service at the same time and, therefore, service tax cannot be levied on the interest/finance charges which is sought to be done in the present case. In our view, the judgment in Bharat Sanchar Nigam Limited's case has no application to the present case. As stated above, what is challenged in this case is the service tax imposed by Section 66 of the Finance Act, 1994 (as amended) on the value of taxable services referred to in Section 65(105)(zm) read with Section 65(12) of the said Act, insofar as it relates to financial leasing services including equipment leasing and hire-purchase as beyond the legislative competence of Parliament by virtue of Article 366(29A) of the Constitution. In short, legislative competence of the Parliament to impose service tax on financial leasing services including equipment leasing and hire-purchase is the subject matter of challenge. Legislative competence was not the issue before this Court in the Bharat Sanchar Nigam Limited's case. In that case, the principal question which arose for determination was in respect of the nature of the transaction by which mobile phone connections are enjoyed. The question was whether such connections constituted a sale or a service or both. If it was a sale then the States were legislatively competent to levy sales tax on the transaction under Entry 54, List II of the Seventh Schedule to the Constitution. If it was service then the Central Government alone had the legislative competence to levy service tax under Entry 97, List I and if the nature of the transaction partook of* *the character of both sale and service, then the moot question would be whether both the legislative authorities could levy their separate taxes together or only one of them. It was held that the subject transaction was a service and, thus, the Parliament had legislative competence to levy service tax under Entry 97, List I. In para 88 of the said judgment, this Court observed that "No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods". The principle of law in para 88 squarely applies to the present case. As stated above, we are concerned with "financial leasing services" which are sought to be taxed under Section 65(12)(a)(i). The taxable event is indicated in Section 65(105)(zm). As stated above, the impugned provision operates qua an activity of funding/financing of equipment/asset under equipment leasing under which a lessee is free to select, order, take delivery and maintain the asset. The lessor (NBFC) arranges the finances. It accepts the invoice from the vendor (supplier) and pays him. Thus, the lessor (NBFC) renders financial services to its customer(s) and what is taxed under the impugned provision is the income, by way of finance/interest charges in addition to management fees/documentation charges, which is earned by the financier (lessor). The taxable event is the service which is rendered by the finance company to its customer(s). The value of taxable service under Section 67 is income by way of interest/finance charges (measure of tax) which is not determinative of the character of the levy. Thus, Section 67 of the Finance Act, 1994 seeks to tax financial services rendered by the appellant(s) with reference to the income which the appellant(s) earns by way of interest/finance charges. In the circumstances and for the reasons given hereinabove, the question of splitting up of transactions, as contended on behalf of the appellant(s), does not arise. As held hereinabove, equipment leasing and hire-purchase finance constitute long term financing activity. Such an activity was not the subject matter of the discussion in the Bharat Sanchar Nigam Limited's case. The service tax in the present case is neither on the material nor on sale. It is on the activity of financing/funding of equipment/asset within the meaning of the words "financial leasing services" in Section 65(12)(a)(i). Lastly, we may state that this Court has on three different occasions upheld the levy of service with reference to Entry 97 of List I in the face of challenges to the competence of the Parliament based on the entries in List II and on all the three occasions, this Court has held that the levy of service tax falls within Entry 97 of List I. The decisions are in the case of T.N. Kalayana Mandapam Association (supra), Gujarat Ambuja Cements Ltd. (supra) and All-India Federation of Tax Practitioners (supra)*".

15. Regarding the contention of the Revenue with reference to ownership of the vehicle and its implication the decide lease arrangement, we refer to the decision of Apex Court in ***Industrial Credit and Development Syndicate Ltd. vs. CIT, Mysore & Anrs. (2013) 3 SCC 541.*** The Apex Court dealing with the provisions of Motor Vehicle Act and Income Tax Act with reference to depreciation, held that no inference can be drawn from the registration certificate under Motor Vehicle Act as to the ownership of

the legal title of the vehicle. It was held that if the lessee was in fact the owner he would have claimed depreciation of the vehicle, which as specifically recorded in the order of the Appellate Tribunal was not done. The entire lease rent received by the assessee is assessed as business income in its hand and the entire lease rent paid by the lessee has been treated as deductable Revenue expenditure in the hands of the lessee.

16. We are in agreement with the respondent-assessee and the findings of the Commissioner regarding the treatment of Accounting Standard 19 to decide the nature of lease arrangement. The respondent submitted profit and loss accounts for the relevant period. On perusal, we note that the income for operating lease were shown as lease rental and the assets were depreciated in the lesser's account as these are shown as own assets. In financial lease no depreciation is accounted for. The income shown on such arrangement is EMI received which is principal + interest.

17. As already noted, the Original Authority elaborately considered the various judicial pronouncement of the Apex Court and more specifically the decision in ***Association of Leasing and Financial Service Companies*** (supra). Listing out the difference between operating lease and financial lease the impugned order categorically recorded that the lease arrangements on which the respondent –assessee discharged VAT are operating leases and are not liable to service tax. As already noted for such conclusion the impugned order examined elaborately all the relevant conditions of the lease agreement. On close consideration of the findings recorded in the impugned order and the grounds of appeal contesting such findings, we are

of the view that the impugned order is legally sustainable. The whole thrust of the distinction for financial lease and operating lease is the ownership of the asset. This aspect has been adequately analysed and covered in the impugned order with more specific reference to Accounting Standard 19. As such, we note that there is no factual or legal error in the impugned order calling for interference. Accordingly, we find the appeals by the Revenue are without merit. The same are dismissed. The COs filed by the respondent are also disposed of.

(Pronounced on 10.01.2018).

(S. K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant