IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75692 of 2015

(Arising out of Order-in-Appeal No. 36/SH/CE(A)/GHY/2015 dated 30.03.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Customs House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

M/s. ABC & Co. **: Appellant**
Shri Chitradeep Bhowmik, Chitralekha Apartment,
Jail Road, Silchar, Cachar, Assam – 788 004

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Custom House, Nilamoni Phukan Path, Christian Basti,
Guwahati – 781 005

APPEARANCE:

Shri Pranab Sikdar, Consultant for the Appellant

Shri P.K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76804 / 2024

DATE OF HEARING / DECISION: 30.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Appeal No.36/SH/CE(A)/GHY/2015 dated 30.03.2015 wherein the Ld. Commissioner (Appeals), Guwahati has upheld the demands confirmed in the Order-in-Original No. 02/STC/AC/SIL/2014 dated 24.06.2014.

2. The facts of the case are that the Appellant is engaged in giving the vehicles on hire. During the period from April 2008 to March 2009, the Appellant hired two numbers of 45-seater buses to M/s. Oil and Natural Gas Corporation Limited (ONGC) for carrying out their operations in different parts of Cachar, Karimganj, Hailakandi District and all other parts of

North Eastern Region; the vehicle would be required for 24/12 hours duty. As per the terms of the contract between them and ONGC, the Appellant has to provide the buses for transportation against payment on per kilometre basis. The agreement was for hiring of vehicles and payment was on the basis of time, duration as well as mileage. The Appellant was of the view that the service rendered by them would not be liable to Service Tax under the category of 'rent-a-cab service' since the ownership and possession of the vehicles remained with them only during the period of the contract.

2.1. However, the Department was of the view that the Appellant had rendered 'rent-a-cab service' and alleged that the Appellant had not discharged Service Tax on the said services.

3. Accordingly, a Show Cause Notice dated 25.10.2013 was issued to the Appellant *inter alia* seeking to demand Service Tax of Rs.1,14,806/- [Service Tax of Rs.1,11,462/- + Edu.Cess. of Rs.2229/- + SHE Cess of Rs.1115/-].

3.1. The said Notice was adjudicated by the ld. adjudicating authority vide the Order-in-Original dated24.06.2014 wherein the demands raised in the Notice have been confirmed, along with interest and penalty.

3.2 On appeal, the Ld. Commissioner (Appeals) has also upheld the demands confirmed in the above Order-in-Original vide the impugned order.

4. Aggrieved against the confirmation of the demands in the impugned order, the Appellant has filed this appeal.

5. The Appellant submits that the service provided by them in the instant case is not in the nature of 'rent-a-cab service' due to the following reasons: -

(i) From the contractual provisions as stated herein before, it is distinct that ONGC has not guaranteed a minimum turn over, whether daily, monthly, or annually or during the duration of this agreement and the service provider will not be entitled to demand idle charges or minimum charges or any other loss or damages of whatsoever nature against the ONGC for non-utilization for the said vehicles wholly or in part.

(ii) The ONGC do not guarantee a minimum mileage work for each vehicle per month nor do they guarantee the minimum number of vehicles that will be utilized per month and no liability whatsoever shall be attached to the ONGC on account thereof.

(iii) The ONGC shall pay to the service provider for operation of the said vehicle at the rate as specified in the price schedule attached to page 32 Annexure II of the agreement no. 9010010618 dated 23.09.08 in respect of aforesaid two nos. of 45 seater buses.

(iv) As per relevant clause in the agreement, the service provider shall be required to supply vehicles conforming to the specifications given by ONGC on hire basis. The word 'Rent' means and involve possession and use of the property for a time and payment of compensation for such possession. In this case, the ownership of the vehicles lies with the service provider.

Hence, it is a case of hire of vehicle for operating transport services for fare in contradiction to renting. The service in question was rendered in terms of the contract between the parties for providing transport services on hire basis for carrying out ONGC's operation conforming to the specifications as set forth in scope of work at Annexure I of the agreement.

(v) ONGC was not renting out any stipulated number of vehicles, but was making payment for operating trips to various places. The vehicles in question continued to be with the respondent, including during the time of it's operations for ONGC. As and when the trips were required to be undertaken, the service provider was asked to carry out the same and he was paid per trip depending upon distance, time, etc. as per price schedule.

(vi) The important thing to be noticed is that, the buses were not leased out for any interval of time, for use by ONGC, according to it's discretion. That the Service Tax under the heading does not cover all manner of transport or vehicle hire services. The levy has been defined as any services provided by a rent-a-cab scheme operator in relation to renting of a Bus. In the present case, there was no renting of buses. Instead, transport services were provided. In view of these Service Tax demand on the said assessee is not sustainable during the period in question as mentioned in the demand-cum-show cause notice dated 25.10.2013. The demand for interest and penalty have also to fail since they are dependent on the tax.

5.1. Accordingly, the Appellant contends that the service rendered by them is not rent-a-cab service and thus no Service Tax is payable by them in this regard.

5.2. To support their contention, the Appellant has relied on the decision in the case of *Shree Gayatri Tourist Bus Service v. Commissioner of Central Excise, Vadodra [2013 (29) S.T.R. 499 (Tri. – Ahmd.)]* wherein a similar issue has been decided in favour of the appellant.

6. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that in the present case, the Appellant has rented out two 45-seater buses to M/s. ONGC for transportation of people in the State of Assam and parts of North-Eastern Region. The vehicles were required to be given for 24/12 hour duty and payments were made on the basis of kilometre, duration as well as mileage. We observe that the ownership of the vehicles remained with the Appellant during the period of the contract. The appellant has submitted that in rent-a-cab service, the ownership and possession of the vehicle is temporarily dispossessed from the owner and given to the person who is hiring the said vehicle; however, in this case, the ownership remained with the Appellant themselves and thus the service rendered by them is not ‘rent-a-cab service’.

8.1. We have perused the Contract Agreement dated 23.09.2008 signed by the Appellant and M/s. ONGC.

Some clauses in the contract which are relevant to the issue on hand are reproduced below: -

"5.00 OPERATIONAL REQUIREMENTS:

5.01 Contractor must ensure that the timetable for the services provided by the transport control room or by the authorized user showing departures and arrival timings including stoppages en-route are strictly followed for safe and timely arrival of shift personnel/officers of ONGC. Any delay in this regard on account of lapses by the contractor or his crew will lead to Liquidated Damages, and shall be imposed as per Liquidated Damages clause. Frequent delays over a period of time for the same reason may lead to the termination of the contract.

5.02 Contractor must take all necessary arrangements to provide satisfactory and efficient services under the contract for which he may be required to maintain necessary and suitable expedients.

5.03 The Buses may be used either for Local or Outstation duties. The driver should be adequately equipped with money and other requisites to leave for outstation duty after getting instructions from Transport Section.

5.04 The Buses along with the crew must report at the designated site. Any late reporting recorded due to the fault of the contractor shall attract LD as per Liquidated Damages clause.

5.05 The Buses are required to be placed at the disposal of ONGC for 12 hrs or 24 hrs as applicable for a minimum of 26 days in a calendar month. Balance days in a month, in excess of 26 days shall be "OFF-Days", meant for maintenance/repairs. These "OFF DAYS" shall be availed by the contractor, only after prior permission of Head of Logistics or user group, which shall normally be spread as ONE DAY PER WEEK or MAXIMUM TWO DAYS AT A STRETCH. Absence of Bus from the duty without prior permission shall not be adjusted against "OFF DAYS" and will be liable for levy of Liquidated Damages as per LIQUIDATED DAMAGES CLAUSE.

5.06 The 12 hours duty Buses may also be required to work beyond normal working of 12 hours, for operational requirements, for which extra payment, under the name of OT, shall be made. However this OT charges shall not exceed the difference of standing charges of 24 hrs. duty and 12 hrs. duty.

5.07 Availability of Bus in a month should not be less than 26 days. If over a period of 3 months any Bus remains available for less than 26 days, then the Bus service will be considered as unsatisfactory and it may lead to termination of the contract.

5.08 Contractors must provide services as per daily instructions given by the authorized officer of the ONGC, depending upon operational priorities and exigencies.

5.09 For safeguarding the interest of ONGC employees, over speeding of the Bus should be avoided. Reports of over speeding will lead to removal of driver.

5.10 ONGC reserves the right to direct the Bus to report to any duty place at its discretion. The duty place if required shall be changed and will be binding upon the contractor.

5.11 Contractor's denial or failure in executing the work timely due to any negligence of his employees, improper condition of Bus or on account of any other lapse leading to delay in field operations/duty shall be liable for levy of Liquidated Damages, as per Liquidated Damages clause, for the number of hours of delay, as per the records available in the log sheets. Repetitions of such lapses may lead to termination of contract.

5.12 The duty hours and kilometers run for payments shall be counted from the time the Bus reports for duty at the assigned duty place up to the time and place of release from the place of duty. The Bus will leave the control room only after specific permission is given.

5.14 Fueling of Buses shall be carried out prior to reporting for duty and should be adequate enough for 24 hours of work/500 KM run.

5.16 The Contractor shall make own arrangements for safety and security as well as parking/safe keeping of the Buses at his own risk & cost after duty hours.

5.17 Crew Le. driver and conductor(s) provided with the buses should be physically fit, professionally sound and legally competent in all respect. Necessary substitute must be maintained to avoid any disruption to the operations. Contractors shall ensure that two drivers and two conductors are provided on each bus on 24 hours (round the clock duty). Failure to provide the required drivers will lead to imposition of Liquidated Damages as per Liquidated Damage

5.18 Contractor shall be responsible for obtaining and maintaining valid identity cards for his employees to be issued by ONGC. In case a Bus is not allowed within ONGC allotted duty point/site/premises on account of non availability of identity card(s) with the Bus crew, it shall be treated as absence from duty and will be liable for levy of Liquidated Damages as per Liquidated Damages clause.

5.19 To avoid any mishap/accident only skilled persons with sufficient experience in trade must be deployed.

Contractor shall ensure that his driver is deployed on duty after adequate rest to avoid accidents due to over fatigue.

5.20 The crew deputed by the contractor shall behave properly with ONGC's officers/staffs and shall maintain punctuality and discipline.

5.21 No "Unauthorized passengers will be allowed to travel in the Buses along with ONGC personnel

5.22 Contractor or his representative shall abide by usual and special rules regarding safety and security measures while on duty with ONGC as per Mines act or as per direction of Safety Representative of ONGC at work site. The vehicles will be having spark arresters. In case of any default, ONGC reserves the right to

> *a) Ask the driver to remove the Bus/leave the site. In this eventuality ONGC shall recover LD as per Liquidated Clause.*
>
> *b) In case of any damage caused to such violation of safety regulations, ONGC shall recover cost of damages from the Contractor as assessed by ONGC.*
>
> *c) For violation/jeopardizing safety and security of ONGC property and personnel, ONGC reserves the right to terminate the Contract with immediate effect in addition to recovery of LD as per Liquidated Clause.*

5.28 A continuous absence of Bus for thirty days from the duty of ONGC shall attract action under Termination clause of the contract. Any Bus not reporting for duty for any period less than 30 days without any written notice shall be liable for Liquidated Damages as per Liquidated Damages clause.

5.29 Contractor will inform ONGC about occurrence of any accident involving his Bus within 24 hours and shall provide substitute after inspection so as to avoid any disruption in field operations. Absence of Bus due to any accident shall not be entitled for any exemptions of liquidated damages, whatsoever, if substitute is not arranged.

5.30 In case of a major accident, rendering the Bus to be completely out of use in future, contractor must notify the same to ONGC, in writing whereupon the accidental Bus shall be inspected by a team of ONGC officers to ascertain the facts. In such circumstances contractor shall be given a period of 30 days to provide another Bus of similar specification from the date of inspection is carried out. No liquidated Damages shall be levied for the non-availability of Bus from the date of notification of accident till above permissible period for placement of another Bus.

> *5.32 In case the Buses are found to be involved in any theft case/pilferage, the contract may be terminated as per Termination clause of the contract and security deposit/ Performance Bank Guarantee shall be forfeited. In case of seizure of the Bus by State authorities/police on this account, the responsibility regarding release of the Bus shall rest with the contractor solely. ONGC shall impose applicable penalty as per Liquidated Damages clause during the period of seizure on account of non-availability, unless the civil/police authorities clears the indulgence of contractor's Bus against the charges."*

8.2. From the clauses reproduced above, we observe that the Appellant is the owner of the said vehicles and they have not given the possession of the vehicles to ONGC. In renting, the ownership and possession of the vehicle is given to the service recipient, which is not the case here. Thus, we observe that the service rendered by the appellant in this case is only transportation and not renting. Accordingly, we hold that the service rendered by the Appellant is not liable to Service Tax under the category of 'rent-a-cab service'.

8.3 We find that this view has been held by the Tribunal in the case of *Shree Gayatri Tourist Bus Service v. Commissioner of Central Excise, Vadodra [2013 (29) S.T.R. 499 (Tri. – Ahmd.)]*. The relevant paragraphs of the said decision are reproduced below:-

> *"32. I have considered the submissions made at length and perused the records. On perusal of the record, I find that there is no dispute as regards the fact that the assessee had an agreement with ONGC for the purpose of giving vehicles to transport the employees of ONGC to various places. As correctly pointed out by the learned counsel that Member (Judicial) had reproduced various clauses of contract in her differing order in Para 2. On perusal of such clauses, I find that the said agreement is between ONGC and the assessee and is for transportation of personnel and their delegates under the instructions*

and direction from the officials of ONGC. There are very clear clauses which indicates that the charges that has to be paid to the assessee-appellant has to be based basic distance and any express travelled will upon pro rata kilometres traversed. The clauses also indicate very clearly that the appellant is responsible for maintenance of the vehicles and he is suppose to fill the fuel and make the vehicle available along with the driver and substitute the vehicle in the case of any break down of vehicle. I find that the said clauses clearly indicate that the appellant herein is in possession of vehicles and is only hiring out the vehicles to ONGC for a stipulated period or as per the agreement. Whether the hiring out of vehicle is for a day or a month does not mean anything, as the said vehicle is still in the possession of the appellant-assessee or his driver during the entire period. I find that the co-ordinate Bench of the Tribunal in the case of Sri Sai Krishna Travels (wherein I was one of the Member) was considering an identical issue and has held that in this kind of situation, the services rendered by the assessee cannot fall under the category of Rent-a-Cab services, as per the definition enshrined in Section 65(91) of the Finance Act, 1994. I also find that the decision relied upon by the learned special counsel for the Revenue in the case of P. Sukumar [2010 (17) S.T.R. 524 (Tri. - Chennai)], Bharat Travel [2010 (20) S.T.R. 646 (Tri. - Ahmd.)] and Express Tours and Travels were rendered by a Single Member Bench while the judgment of Sri Sai Krishna Travels is rendered by a Division Bench. I also find that the judgment of Kuldip Singh Gill was not on an issue which is before me in difference of opinion hence the said judgment may not carry the case of the Revenue any further".

9. In view of the above discussion and by relying on the decision cited above, we hold that the demand of service tax confirmed in the impugned order under the category of 'rent-a-cab service' is not sustainable. Since, the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise. Accordingly, we set aside the demands of service tax along with interest and penalty confirmed in the impugned order.

10. In the result, the impugned order is set aside and the Appeal filed by the Appellant is allowed.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd