IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/89782/14

(Arising out of Order-in-Appeal No. AV(90)03/2014 dated 19.5.2014 passed by Commissioner of Central Excise & Customs (Appeals), Aurangabad)

The Shrigonda SSK Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**

Appearance:

Shri S.B. Awate, Consultant, for appellant
Shri V.R. Reddy, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 6.3.2018
Date of Decision: 11.4.2018

ORDER NO. **A/85958/2018**

Per: Ramesh Nair

The issue involved in the present case is that whether the renting of bullock cart without bullocks is liable to service tax under the category of supply of tangible goods for use.

2. Shri S.B. Awate, learned Consultant appearing on behalf of the appellant, submits that by renting of the bullock cart without bullocks, the possession and control of the cart does not remain with the appellant whereas the same is transferred to the person to whom the bullock card was

rented out. Therefore, the ingredient of definition of 'supply of tangible goods for use' does not get satisfied. Therefore, the same is not taxable. In this regard, he submits that the very identical issue is covered by this Tribunal's judgment in the case of *Bhima SSK Ltd. vs. CCE, Pune-III – 2015 (39) STR 440 (Tri.-Mumbai)*.

3. Shri V.R. Reddy, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the record, we find that the only issue is whether renting out of bullock cart without bullocks will fall under the service of supply of tangible goods for use. The definition of supply of tangible goods for use is as under:-

> *""Supply of tangible goods" means any service provided or to be provided to any person by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring the right of possession and effective control of such machinery, equipment and appliances."*

In terms of the above definition, the service would fall under the said category only when the supply is without transferring the right to possession and effective control of machinery, equipment and appliances. In the present case, the supply of the bullock cart is without bullocks. The recipient of service is engaging his own bullocks and using the bullock cart. In this fact, the right to possession and effective control does not remain with the service provider i.e. the appellant. Therefore, such service does not fall under supply of tangible goods for use service. This issue is squarely covered by the judgment of *Bhima SSK Ltd.* (supra) cited by the learned counsel, wherein the identical issue was considered. The Tribunal has passed the following order:-

> *"5. We have considered the submissions made by both the sides. As the issue lies in narrow compass, after waiving the requirement of pre-deposit, we take up the appeal itself for consideration and disposal.*
>
> *5.1 As per Section 65(105)(zzzzj) of the Finance Act, 1994 "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipments and appliances for use, without transferring the right of possession and effective control of such machinery, equipments and appliances. In other words, the right of possession and effective control over the goods should remain with the service provider. When the bullock carts are supplied without the bullocks, the possession and control over the cart does not lie with the service provider. Therefore, mere activity of renting of bullock cart does not come within the purview of 'Supply of Tangible Goods for Use Service'."*

5. In view of the above judgment of this Tribunal, the issue is no longer *res integra*. Accordingly, the impugned order is set aside. The appeal is allowed.

(Pronounced in court on 11.4.2018)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

tvu