

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 89896 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/310/18-19 dated 18.09.2018 passed by the Commissioner (Appeals) of CGST, Nashik)

M/s Bhaurao Chavan SSK Ltd.

.....Appellant

Unit-I Laxmi Nagar Degaon
Yelgaon Tal Ardhapur Nanded
Maharashtra

VERSUS

C.C.E. & S.T., Aurangabad

.....Respondent

N-5...Town Centre, CIDCO,
Aurangabad, Maharashtra-431030

APPEARANCE:

Shri J.N.. Somaiya, Advocate for the Appellant
Smt. Anuradha Parab, Assistant Commissioner Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85321 / 2020

Date of Hearing: 24.09.2019

Date of Decision: 25.02.2020

PER: AJAY SHARMA

This appeal has been filed challenging the order dated 18.09.2018 passed by the Commissioner (Appeals) of CGST, Nashik in Order-in-Appeal No. NSK/EXCUS/000/APPL/310/18-19.

2. The issue involved is whether the appellants are liable to pay Service Tax on the rent received by them for allowing the harvesting contractors to use the Appellant's bullock carts with tyres without

any bullocks or driver for transporting the sugarcane to the sugar factories?

3. A brief background of facts in the present petition is necessary. The appellants are engaged in the manufacture of sugar and molasses. They are also providing bullock carts on rent basis to the farmers for transportation of sugar cane to its sugar factory. The period involved is 21.1.2015 to 31.3.2016 i.e. post negative list. According to the department, during the disputed period the appellants have received a gross billed amount of Rs.31,74,620/- towards rent of Tyre Bullock carts and are liable to pay service tax of Rs.4,30,383/- which the Appellants failed to pay. Accordingly a show cause notice dated 13.7.2017 was issued u/s. 73(1) of the Finance Act, 1994 demanding the duty alongwith interest and penalty. The said show cause notice culminated into the Order-in-Original dated 29.12.2017 by which the Adjudicating Authority confirmed the demand alongwith interest and penalty. Commissioner (Appeals), vide order impugned order dated 18.9.2018 affirmed the aforesaid order by rejecting the Appeal filed by the Appellants.

4. Learned counsel for the appellants submits that the Appellants supplied only the bullock carts with tyres and not bullocks to the farmers nor they provide any driver for driving the bullock carts to the farmers. According to him the effective control and possession of the bullock carts does not lie with the appellants. According to learned counsel, the bullock carts cannot come under the category of '*Supply of Tangible Goods for use*'. He also brought to my notice the Order dated 20.2.2018 of the Commissioner (Appeals) for the earlier

period viz. October, 2009 to 21.01.2015 by which the learned Commissioner after discussing scope of the Negative List given under clause (d) of Section 66D *ibid* held that Tyre Bullock Carts are provided on rent by the Appellants and these services can be considered as related to agriculture/agricultural produce which fall under negative list and hence not liable to Service Tax even after 1.7.2012. Per contra learned Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal. He further submits that in view of the different clauses of agreement between the Appellants and the service receiver i.e. various contractors it is established that the effective control of the bullock cart lies with the appellants and therefore the learned Commissioner has rightly rejected the appeal filed by the Appellants.

5. I have heard learned Counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records of the case including the synopsis and case laws submitted by the learned counsel. Undoubtedly the Appellants have supplied the Tyre Bullock Carts without bullocks or driver to the recipient of service i.e. farmers. The farmers have to engage their own bullocks and drivers for utilising the bullock carts. If the bullocks are of the farms and the drivers are also appointed by them then the right of possession and effective control cannot be said to be rest with the Appellants. Merely because in the agreement some route has been suggested by the Appellants which the farmers have to follow or that if during the temporary stoppage of work in the sugar factory, the employee or

the labourer of the contractor/farmer are not permitted to engage in any other work or are not paid remuneration for that day, does not make them under the effective control of the Appellants. The remuneration to them, in any case, has to be paid by their contractor/farmer only and they cannot claim it from the appellants. Therefore from the facts on record it is clear that the appellant has delivered the effective possession and control of the Tyre Bullock carts to the farmers/contractors. I have also gone through the Order dated 20.2.2018 of the Commissioner in Appellant's own case on the same allegations for the immediate prior period i.e. 1.7.2012 to 21.1.2015 which also pertains to Negative List regime and am completely in agreement with the view taken by the learned commissioner in that order. A plain reading of Section 66D(d)(iv) *ibid* would make it clear that the services relating to agricultural or agricultural produce by way of *renting or leasing of agro machinery* is outside the purview of Service Tax. Undoubtedly sugarcane is an agricultural produce and as per various dictionary meanings tyre bullockcart very well falls within the definition of agro or agricultural machinery. Learned Commissioner in the impugned order also did not dispute it. The only thing which prompted him to take a view opposite to the view taken earlier in appellants' own case, is the terms of the agreement which, as I have already discussed, do not make any material difference and it cannot be said that the effective control of the bullock carts remains with the Appellant. I have also gone through the recent decision of this Tribunal in the matter of *Mukteshwar Sugar Mills Ltd. vs. CCE&C, Aurangabad; 2018(10) TMI*

1324-CESTAT Mumbai in which also this Tribunal has held that '*Renting of Bullock Carts*' during harvesting seasons for procuring sugarcane from fields does not come within the purview of '*Supply of Tangible Goods for use Service*'. Although various other decisions were also cited by the learned counsel but since those are pertaining to pre Negative List therefore I am not discussing them. In my view Tyre Bullock Carts without bullocks and driver, provided by the appellant on rent for the purposes relating to agriculture/agricultural produce without having any right of possession or effective control of the Appellants over them, falls under negative list as discussed above and is not liable to Service Tax under the category of *Supply of Tangible Goods Service*.

6. The Appeal filed by the Appellants is accordingly allowed with consequential relief, if any.

(Order pronounced in the open Court on 25.02.2020)

(Ajay Sharma)
Member (Judicial)