

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 89051 of 2018

(Arising out of Order-in-Original No. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 passed by Commissioner, Service Tax-VII, Mumbai.)

ALD Automotive Private Limited

.....Appellants

Unit No.1802, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Off Senapati Bapat Marg
Lower Parel, Mumbai – 400 013.

VERSUS

Commissioner of CGST & Central Excise

.....Respondent

Mumbai East
9th Floor, Lotus Info Centre
Near Parel Station, Parel (East)
Mumbai - 400 012.

WITH

Service Tax Appeal No. 89066 of 2018

(Arising out of Order-in-Original No. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 passed by Commissioner, Service Tax-VII, Mumbai.)

ALD Automotive Private Limited

.....Appellants

Unit No.1802, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Off Senapati Bapat Marg
Lower Parel, Mumbai – 400 013.

VERSUS

**Commissioner of CGST & Central Excise
Mumbai East**

.....Respondent

9th Floor, Lotus Info Centre
Near Parel Station, Parel (East)
Mumbai - 400 012.

WITH

Service Tax Appeal No. 89068 of 2018

(Arising out of Order-in-Original No. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 passed by Commissioner, Service Tax-VII, Mumbai.)

ALD Automotive Private Limited

.....Appellants

Unit No.1802, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Off Senapati Bapat Marg
Lower Parel, Mumbai – 400 013.

VERSUS

**Commissioner of CGST & Central Excise
Mumbai East**

.....Respondent

9th Floor, Lotus Info Centre
Near Parel Station, Parel (East)
Mumbai - 400 012.

WITH**Service Tax Appeal No. 89069 of 2018**

(Arising out of Order-in-Original No. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 passed by Commissioner, Service Tax-VII, Mumbai.)

ALD Automotive Private Limited**.....Appellants**

Unit No.1802, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Off Senapati Bapat Marg
Lower Parel, Mumbai – 400 013.

*VERSUS***Commissioner of CGST & Central Excise
Mumbai East****.....Respondent**

9th Floor, Lotus Info Centre
Near Parel Station, Parel (East)
Mumbai - 400 012.

WITH**Service Tax Appeal No. 85197 of 2020**

(Arising out of Order-in-Original No. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 passed by Commissioner, Service Tax-VII, Mumbai.)

ALD Automotive Private Limited**.....Appellants**

Unit No.1802, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Off Senapati Bapat Marg
Lower Parel, Mumbai – 400 013.

*VERSUS***Commissioner of CGST & Central Excise
Mumbai East****.....Respondent**

9th Floor, Lotus Info Centre
Near Parel Station, Parel (East)
Mumbai - 400 012.

Appearance:

Shri D. B. Shroff a/w Shri Mihir Deshmukh & Shri Rajan Mishra, Advocates for the Appellants

Shri Priyesh Bheda, Authorized Representative for the Respondent

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85287-85291/2024**

Date of Hearing: 10.11.2023

Date of Decision: 11.03.2024

PER : M.M. PARTHIBAN

These appeals have been filed by M/s ALD Automotive Private Limited (herein after, referred to as 'the appellants'), assailing Order-in-Original Nos. 11 to 14/ST-VII/RK/2015-16 dated 04.11.2015 (herein after, referred to as 'the impugned order') passed by the learned Commissioner Service Tax-VII, Mumbai.

2.1 Briefly stated, the facts of the case are that the appellants herein is in the business of providing motor vehicles on operating lease as well as providing various other allied services to their customers. For this purpose, the appellants have been entered into a Master Lease Agreement (MLA) with the Lessees. Under the MLA, as and when any lessee requires a motor vehicle for use by him/it or for its employees, the lessee approaches the appellants with the requirements. The motor vehicle, to be purchased and leased by the appellants to the customer, is selected by the lessee pursuant to which, the appellants purchase the motor vehicle and instructs the dealer of the motor vehicle to deliver the said vehicle to the lessee. The motor vehicle is purchased by the appellants from the motor vehicle dealer and therefore always it remains as the property of the appellants. However, for the purposes of the Motor Vehicles Act, 1988, the Motor Vehicle is registered in the name of the Lessee as the User thereof and the appellants name is record under the heading of 'hypothecated to/financer'. In terms of the Operating Lease Agreement, the aforesaid transaction is 'deemed sale' of motor vehicles by the appellants to their clients, which has been recognized under Article 366 (29A) of the Constitution of India. Such activity is not subjected to levy of service tax both prior to the introduction of negative list, as any specified taxable services as well as after introduction of negative list regime, in terms of specific exclusion provided for 'deemed sale'.

2.2 In terms of the MLA, the lessees have an option to avail additional services from the appellants, which is more aptly described as 'fleet management services'. The lessees may select one or more of the services offered by the appellants for a separate charge. Some of the services offered under the category of 'fleet management services' are (i) vehicle insurance/insurance renewal payment service (ii) routine maintenance and servicing of motor vehicle (iii) door-to-door pickup and drop services for maintenance and servicing of motor vehicle (iv) emergency breakdown services for motor vehicle (v) Relief vehicle, when the vehicle is under a

repairs, maintenance or servicing (vi) insurance claims handling service etc. The above services are provided by the appellants at the option of the lessee for which the appellants raise a separate invoice along with applicable service tax payable thereon. The levy and discharge of service tax on fleet management services, by the appellants is not under dispute.

3.1 On the basis of an intelligence received suggesting evasion of service tax by the appellants, an enquiry was initiated by the Head Quarters Anti-evasion wing of the Service Tax-I Commissionerate, Mumbai. Preliminary investigation suggested that the appellants were engaged in providing taxable services of 'Management, Maintenance or Repair Service' and 'Rent-a-Cab service'; however they have not obtained registration for these services and not paying service tax due thereon. On completion of the investigation, the department contended that the services offered by the appellants are in the nature of Rent-a-Cab scheme operator as defined under Section 65(91) of the Finance Act, 1994 and is subjected to levy of service tax under Section 65(105)(o) *ibid* for the period from 01.04.2006 to 31.03.2013; and as a 'service' as defined under Section 65(B) 44 *ibid* and as a 'taxable service' under 65(B)51 *ibid* with effect from 01.07.2012. Accordingly, show cause proceedings were initiated by the department against the appellants proposing for demand of service tax along with interest by invoking extended period on the ground of suppression of facts, under Section 73(1A) read with Section 68 *ibid*, Rule 6 of the Service Tax Rules, 1994 and for imposition of penalties under Section 76, 77, 78 *ibid*. The various Show Cause Notices (SCNs) issued on the appellants were adjudicated by Commissioner in confirming the adjudged demands along with interest under Sections 73 and 75 *ibid*, respectively, besides imposition of penalties under Sections 76, 77, 78 *ibid*, vide impugned order dated 04.11.2015. The details of these SCNs are as follows:

S. No.	Show Cause Notice No & Date	Period of demand	Amount of Service Tax Demanded In Rs.
1	F. No. ST/HQ/AE/A/279/06/3456 dated 18.10.2011	01.04.2006 to 31.03.2011	39,57,88,487
2	F. No. ST/MUM/Dn-III/Gr-V/ALD/Auto/SCN/51/2012 dated 18.10.2012	01.04.2011 to 31.03.2012	14,45,42,318
3	F. No. ST/MUM/Dn-III/Gr-I/ALD/Auto/SCN/2013/3543 dated 13.05.2014	01.04.2012 to 31.03.2013	20,71,78,374
4	F. No. ST/MUM/Dn-III/Gr-I/ALD/Auto/SCN/2013/305 dated 23.03.2015	01.04.2013 to 31.03.2014	23,55,89,507
	Total		98,30,98,686

Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3.2 Learned Advocate for the appellants contends that purchase of motor vehicles under operation lease transaction is a deemed sale which is subject to VAT/Sales Tax, and are outside the purview of levy of service tax. However on the services provided under the category of fleet management services, the appellants are duly paying service tax to the department.

3.3 The operating lease transaction of the appellants involves use of the motor vehicles purchased specifically for the lessee as per his instructions. Such vehicle is registered in the name of the lessee and is available at the disposal of the lessee himself during the entire lease period. Therefore, he submitted that the right to use the goods for entire lease period lies with the customers of the appellants. Learned Advocate also submitted copy of MLA and citing the various clauses, claimed that the operating lease transactions are not in the nature of service but is a deemed sale covered under the Article 366 (29A)(d) of the Constitution of India which is subject to State VAT/Sales Tax. He also stated that the operational lease transactions are distinguished from Rent-a-Cab service, as the fundamental difference in the transactions is with respect to the manner of identification, deployment and operation of motor vehicle to be used by the lessee. The Motor Vehicles Act, 1988 has clear demarcating provisions in respect of the vehicles to be used in the above two activities by way of the registration of motor vehicle, marking of such vehicles etc. Accordingly, there exists clear distinction in identifying the person who is in possession under the control of the vehicle plying on the road. There are substantial differences with reference to the liability towards loss or damage to the motor vehicle or to 3rd parties from the usage of vehicle which is intrinsic to the control and possession of the motor vehicle. In this context, he stated that the case of Rent-a-Cab scheme, vehicles are registered on the name of the Rent-a-Cab operator; whereas in the case of operating lease under MLA, the registration certificate under Motor Vehicles Act, 1988 is issued in the name of the lessee as registered owner, and not in the name of the appellants. The name of the appellants is indicated in registration document only as the Lessor/ Financer. Further in the case of Rent-a-Cab scheme, the vehicles are registered as commercial vehicle; whereas in their case under MLA, the vehicles are registered as private vehicles.

3.4 In the impugned order dated 04.11.2015, the Commissioner has confirmed the demands on the ground that the services rendered by the appellants under MLA, are Rent-a-Cab operator service for the pre-Negative list period and thereafter as a service, which is not specifically covered under the 'negative list'. In this regard, learned Advocate stated that in a lease transaction there does not necessitate the transfer of ownership. In the lease transaction under MLA in their case, the vehicle is given on lease to their customers as lessee and is always physically available to the lessee himself; He is not required to seek approval or inform the appellants to use the vehicle; even when the lessee decides to move the vehicle on permanent basis to another location, it is only for the requirement of registration under Motor Vehicles Act, 1988, when it involves different States/UTs, he is informing the appellants. Accordingly, he submitted that the motor vehicle on lease/MLA is at the discretion or will of the lessee customers, sufficiently demonstrating that the transfer of control and possession of the vehicle is with the lessee. Hence, he stated that the lease transactions are not covered under the scope of levy of service tax as Rent-a-Cab scheme operator.

3.5 In support of their stand, the learned Advocate had relied upon the following decisions of the Tribunal and the judgement of the Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Arval India Pvt. Ltd. Vs. Principal Commissioner of Service Tax-IV* - 2020 (41) G.S.T.L. 528 (Tri.-Bom)

(ii) *Orix Auto Infrastructure Services Ltd. Vs. Commissioner of CGST, Mumbai East* – Final Order No. A/85414-85420/2022 (Tri.-Mumbai)

(iii) *Dish TV India Ltd. Vs. Commissioner of Central Excise & Service Tax, Aurangabad* - (2024) 14 Centax 377 (Tri.-Bom)

(iv) *Bharat Sanchar Nigam Limited Vs. Union of India*-[2006 (3) SCC 1]

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner Service Tax-VII, Mumbai in the impugned order and submitted that the appeal filed by the appellants is liable to be dismissed as the nature of the services offered by them is Rent-a-Cab Operator service, and is generally covered by the definition of service, post negative list period.

6.1. The main issues for consideration before us can be grouped as follows:

- 6.2. The relevant legal provisions of the Finance Act, 1994, as applicable in the present case of 'Rent-a-Cab Scheme' service, are extracted and given below:

65. (105) "taxable service" means any service provided or to be provided,-

- 65.** (91) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

- 65.** (20) "cab" means
- (i) a motorcab, or
 - (ii) a maxicab, or
 - (iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward:

Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in subclause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab;"

6.3. At the time of introduction of service tax levy on Rent-a-Cab scheme services vide Notification No.26/97-ST dated 11.07.2017, the Ministry of Finance had issued clarification on the scope of levy as follows:

"3. RENT-A-CAB SCHEME OPERATORS

3.1 As per Section 88 of the Finance Act, 1997, 'rent a cab scheme operator' means a person who is the holder of a licence under the Rent-a-Cab Scheme, 1989 framed by the Central Government under the Motor Vehicles Act, 1988. A person is granted a licence by the State Transport Authority under Rule 6 of the scheme. A licence is granted to a person who interalia, maintains not less than 50 motor cabs having tourist permits issued under sub-section (9) of section 88 of the Motor Vehicles Act. The Rent a cab scheme operators, under the scheme are mandatorily required to maintain branch offices or sublicensee offices in at least five cities of tourist importance with facilities for housing, maintenance and repair of vehicles.

3.2 Under the Rent-a-cab Scheme, 1989 the operator is required to maintain a register for each vehicle incorporating particulars as regards the hiring of the same in the format prescribed under the Scheme. Further, the operator under Rule 9 of the Scheme is required to collect hire charges from a foreign national or a non-resident Indian, only in foreign exchange.

3.3 The taxable service rendered by a Rent-a-cab scheme operator means any service provided to any person, by a rent a cab scheme operator in relation to the value of taxable service in relation to the service provided by a Rent a cab scheme operator to any person, shall be the gross amount charged by such operator from such person for services in relation to the renting of a cab and includes such rental.

3.4 The value of taxable service in relation to the service provided by a Rent a cab scheme operator to any customer, shall be the gross amount charged by such operator from such customer for services in relation to the renting of a cab and include the rental so charged. Any other charges billed to the customer such as processing charges, administrative fees, charges for providing extra accessories or providing other value added services such as a provision of driver etc. shall also be includible in the gross amount chargeable to service tax.

3.5 However service tax will not be payable in cases where a bill has been raised on a Rent a Cab Scheme operator, by another rent-a-cab scheme operator who has sub-let the motor cab to the latter operator provided who pays service tax on the amount billed to his client for renting out the motor cab so obtained by him."

However, the above scope of levy of service tax on Rent-a-Cab Scheme service has to be understood in the context of definition of Rent-a-Cab Scheme Operator provided earlier under Section 65(32) as follows:

"65. (32) *"rent-a-cab scheme operator" means a person who is the holder of a license under the Rent-a-Cab-Scheme, 1989 framed by the Central Government under the Motor Vehicles Act, 1988 (59 of 1988)";*

This definition was later amended in the Finance (No.2) Act, 1998 as provided in paragraph 6.2 referred above, so as to include 'any person' providing a service instead of limiting it to the 'person holding a license under the Motor Vehicles Act, 1988'. However, the context of the service provided, whether it is by a 'person holding license' under Motor Vehicles Act or after amendment by 'any person', which is subject to levy of service tax remained the same i.e., 'renting of cabs'.

6.4 From the plain reading of the above legal provisions, it transpires that for the period relating to the pre-negative list regime i.e., prior to 01.07.2012, the taxability was determined in terms of coverage of an activity under the service tax net by defining taxable services under Section 65(105) *ibid*, which enumerated each of the specified services. For the period post-negative list regime, the category of services hitherto defined under the erstwhile regime were merged under a common phrase i.e., 'service' as defined under Section 65B(44) *ibid*, which was brought into effect from 01.07.2012.

7.1 In order to arrive at a conclusion whether the activities undertaken by the appellants in providing motor vehicles on operating lease arrangement or on MLA basis, is a taxable service under the category 'Rent-a-Cab Scheme operator' or whether it is 'deemed sale', we would like to examine the relevant agreement entered in this regard by the appellants with their customers, vis-a-vis the five criteria as laid down by the Hon'ble Apex Court in the case of *Bharat Sanchar Nigam Limited* (*supra*) for determining where the transaction undertaken in respect of the "operating lease" can be said to be a transaction of deemed sale as per Article 366 (29A) (d) of the Constitution of India.

7.2 CBIC has vide its circular No. 198/08/2016-ST dated 17.08.2016 has also clarified on the issue of service tax liability in case of hiring of goods without transfer of the right to use of the goods, and had reemphasized the need to examine each of the agreement on the basis of five point criteria given by the Hon'ble Supreme Court in BSNL case, as follows:

"In terms of sub-clause (d) of clause (29 A) of Article 366 of the Constitution of India, 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 is deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. It

follows that such transactions will be liable for Sales Tax/Value Added Tax. In terms of section 66E(f) of the Finance Act, 1994, transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods is a "declared service" and hence liable to service tax. In this regard some representations have been received.

2. The matter has been examined. I am directed to draw your attention to the fact that in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. Further, the Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India, reported in 2006(2) STR 161 SC, had laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely,-

a. There must be goods available for delivery;

b. There must be a consensus ad idem as to the identity of the goods;

c. The transferee should have a legal right to use the goods — consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;

d. For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute — viz. a "transfer of the right" to use and not merely a licence to use the goods;

e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

3.1 This criteria must invariably be followed and applied to cases involving hiring, leasing or licensing of goods. The terms of the contract must be studied carefully vis- a- vis the criteria laid down by the Supreme Court in order to determine whether service tax liability will arise in a given case. It is not possible to either give an exhaustive list of illustrations or judgements on this issue. Cases decided under the Sales Tax /VAT legislations have to be considered against the background of those particular legislative provisions and terms of contract in that case.

3.2 The following case law may also be referred to. These should not be applied mechanically but their applicability to the facts of a given case, the terms of the contract in the given case and the criteria laid down by the Supreme Court should be examined carefully.

3.2.1. Commissioner VAT vs International Travel House Ltd — Delhi High Court judgement dated 8-9-2009 in ST Appeal 10/2009

3.2.2. Rashtriya Ispat Nigam Limited vs Commercial Tax Officer reported in 1990(77) STC 182 and State of Andhra Pradesh vs Rashtriya Ispat Nigam Limited reported in 2002 (126) STC 114

3.2.3. State Bank of India vs State of Andhra Pradesh reported in 1988 (70) STC 215 A.P

3.2.4 Ahuja Goods Agency vs State of Uttar Pradesh reported in 1997 (106) STC 540

3.2.5 Lakshmi AV Inc vs Assistant Commercial Tax Officer reported in 2001(124) STC 426 Karnataka

3.2.6 *G. S. Lamba and Sons vs State of Andhra Pradesh reported in 2015(324) ELT 316 AP*

4.1 There will also be cases involving either a financial lease or an operating lease. The former generally involves a transfer of the asset and also the risks and rewards incident to the ownership of that asset. This transfer of the risks and rewards is also recognised in accounting standards. It is generally for a long term period which covers the major portion of the life of the asset and at the end of the lease period, usually the lessee has an option to purchase the asset. The lessee bears the cost of repairs and maintenance and risk of obsolescence also rests with him. In contrast, an operating lease does not involve the transfer of the risks and rewards associated with that asset to the lessee. It is for a short term period and at the end of the lease period the lessee does not have an option to purchase the asset. The cost of repairs, maintenance and obsolescence rests with the lessor.

42. Similarly in the aircraft industry there are "dry leases" and "wet leases". Generally speaking, "wet leases" may involve short term provision of an aircraft along with crew, maintenance and insurance while the lessee bears other operating expenses. In contrast, a "dry lease" is for a relatively longer term and involves the provision of an aircraft only without crew.

4.3 The above two situations have been elaborated only to explain and emphasize the diverse nature of such transactions. There can be variations and in some cases, a combination.

5. In all these cases, no a priori generalisations or assumptions about service tax liability should be made and the terms of the contract should be examined carefully, against the backdrop of the criteria laid down by the Supreme Court in the Bharat Sanchar Nigam Limited case as well as other judicial pronouncements."

7.3 We have examined various clauses contained in the sample Master Lease Agreement submitted by the appellants. This sample agreement has been entered into by the appellants ALD Automotive Private Limited (ALD) with Accenture Services Private Limited, and some of the important clauses which are relevant for such examination of 5-point criteria are as follows:

"1. Purpose of the Contract:

1.1. The purpose of this contract is to define the conditions under which ALD will supply the Lessee with one or more motor vehicle(s) in the form of long-term lease agreement without the purchase option.

The Lessee accepts the responsibility for the vehicle(s) over which it has the custody thereof in the Motor Vehicles Act, 1988 will be applicable ('the Act')....

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3. Ownership:

3.1 Save as otherwise provided in this MLA, no right, ownership, title or interest in the vehicle shall pass to the Lessee by virtue of these presents. The Lessee shall at no time contest or challenge the Lessor's sole and exclusive ownership right, title and interest in the vehicle and the Lessee shall not assign, sublet, hypothecate or otherwise encumber the vehicle. The Lessor and the Lessee hereby confirm that their intent is that the vehicle shall at all times remain the property of the Lessor. For the purpose of the Act and the

provisions thereof, the vehicle shall be registered in the name of the Lessee and the Lessor shall be registered therein as the financier under this MLA and the Lessee shall be fully liable and responsible for all the obligations, liabilities and duties as provided under the Motor Vehicles Act or under any other law or instrument pertaining to the use of the vehicle. The Lessee undertakes and hereby authorises the Lessor to have the said registration transferred in the name of the Lessor or its nominee on the termination and/or expiry of the lease and/or requiring possession thereof, for whatever reason at any time during the currency of this MLA or whenever required to do so. Conditional upon the Lessee's compliance with the fulfilment of the terms and conditions of this MLA and the vehicle lease contract, the Lessee shall have the right to have exclusive peaceful procession, operation and the use of the vehicle for the full term of the Lease."

4. Lessee's warranties:

4.2 The lessee warrants that it has obtained all consents, licences, approvals as are necessary for or in connection with the execution, validity and enforceability of this MLA and the vehicle lease contract and for the use and operation of the vehicle and undertakes to give them effective and in force at all times during the period of this MLA and till the vehicle is delivered back to the ALD as specified in this MLA."

Further, we find that there are separate clauses contained in this Master Lease Agreement for 'vehicle custody, use, maintenance and repairs'; 'vehicle return'; 'insurance'; 'terminal kilometres'; 'impose, taxes and other charges'; 'invoicing and payments'; 'amendments, early termination, waiver. Assignment, limitation of liability, arbitration' standard classes for the Lease agreement.

7.4 On careful examination of the above clauses, we are of the considered view that in the operational lease transaction as above there is complete compliance with the five point criteria laid down by the Hon'ble Supreme Court, as follows:

- (i) the goods i.e., the motor vehicle(s) have been agreed for delivery from the lessor to lessee;
- (ii) on identity of the goods i.e., the motor vehicle(s) under the lease arrangement, among the lessor and lessee they are in agreement of the goods handled in such lease and as per the terms and conditions thereof;
- (iii) the lessee being the transferee has got the legal right to use the motor vehicle(s) and consequently all legal consequences of such use, including any permissions or licenses required therefor are made available to the lessee;

(iv) there is a definite lease period, during which the lessee has obtained the legal rights, to the exclusion to the lessor viz. a "transfer of the right" to use as the vehicle(s) have been kept at the disposal of the lessee;

(v) The lessor having agreed to give to the lessee, the delivery and possession of the motor vehicle(s), can have the return of the vehicle only on completion of normal lease period or under early return clause, and thus cannot again transfer the motor vehicle(s) to any other person during the lease period.

7.5 Since as per the terms of the agreement clauses as stated above, we find that all the five conditions as laid down by the Hon'ble Supreme Court in case of BSNL (supra) are satisfied, we have no hesitation in holding that the transaction in the case before us is of 'deemed sale' as per Article 366 (29A) (d) of the Constitution of India.

8.1 We find that Co-ordinate Bench of this Tribunal has in case of *Arval India Pvt Ltd* (supra) had concluded in respect of similar operating lease agreement, that the said agreement was that of 'deemed sale'. The relevant paragraphs of the said order is extracted below:

"2. *M/s. Arval India Pvt. Ltd. provides motor vehicles, identified by their corporate customers, on lease for specified periods and which may, on exercise of option by the lessee, incorporate maintenance and repair (denominated as 'fleet management') during the tenor of the agreement. The consideration, to be paid at regular intervals specified in the lease agreement, is sought to be brought within the authority to levy service tax under Finance Act, 1994. The impugned order has upheld the taxability while discarding the proposal to invoke the extended period beyond eighteen months computed backwards from the relevant date, which is under challenge by the assessee-appellant. There is no dispute that the tax liability on 'fleet management' has been discharged as provider of 'management, maintenance or repair service' and on commission received from insurance companies as provider of 'business auxiliary services' while, claiming the transaction to be 'deemed sale', the 'lease rental' was not offered up as consideration for rendering taxable service. A portion of the confirmed demand pertains to the period prior to 'negative list' regime of taxation of services. Revenue challenges the discarding of tax liability for the extended period proposed in the show cause notice as well as the grant of abatement of sixty per cent available under Notification No. 1/2006-S.T., dated 1st March, 2006.*

3. *The levy of service tax on 'rent-a-cab' was subject to detailed examination by the Hon'ble High Court of Gujarat in Commissioner of Service Tax v. Vijay Travels [2014 (36) S.T.R. 513 (Guj.)] and we do not need to look elsewhere for a more authoritative exposition. By incorporation of Section 65(105)(o) in Finance Act, 1994 with effect from 16th July 1997, the 'service provided or to be provided to any person by a rent-a-cab scheme operator in relation to the renting of a cab' was taxable and the two key expressions deployed therein, viz., 'rent-a-cab scheme operator' was*

defined as '(91)... means any person engaged in the business of renting of cabs' and 'cab' as

'(20)... means -

(i) a motorcab, or

(ii) a maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than 12 passengers, excluding the driver, for hire or reward...'

in Section 65 of Finance Act, 1994. The definition has evolved over the time that the activity was brought within the tax net. Initially, it was intended to subject the business of renting motor cabs to persons desiring to drive such cabs for their own use, and including a driver should the hirer so desire, as per licensing by 'State transport authorities' under the eponymous scheme that infused a regulatory framework for motor cabs so handed over for use other than as common public transport. By amending the definition in Section 65 of Finance Act, 1994, from time to time, variations in usage by recipients of service that supplemented or supplanted purchase of such vehicles for self-use were brought within the ambit of taxation.

4. The original object of the levy was the use of motor cabs by persons other than owners but distinguishable from patronage of taximeter cabs. The objective, thus, was not merely garnering of revenues from a new source but also to ensure that tourist taxi operations were not targets of a discriminatory levy. The two services that were thereby brought within the net fulfilled similar customer demands in the market space. Though the appellation was not varied, subsequent amendments extended the scope of tax to cover all users of every kind of automobile for carriage of persons without the right of ownership. In other words, the substitution of ownership by usage, that was restricted only by certain minimal limitations to distinguish from the former, was no longer an activity beyond the pale of tax.

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12. Impliedly, neither did the taxing powers vested in the Union extend either to 'sale' or 'deemed sale' nor did all of the several 'deemed sales' incorporated in the constitutional amendment include some component that was not 'deemed sale' outside the pale of taxation in List-II in the Constitution of India. The impugned order has erred in presuming so. In 'works contracts', there is an aspect that is beyond the taxing powers of the States which could, under Parliamentary sanction, be taxed by the Union. In both 'sales' and 'services', the taxable event is determined by the existence of 'buyer/recipient' and 'seller/provider' with the conclusion of the contractual obligation as the definitive event to be taxed. In the absence of concurrent jurisdiction, the vivisection of such enumerations in Article 366(29A) of the Constitution of India alone can confer the authority under List-I of the Seventh Schedule in the Constitution of India.

13. Agreements/contracts of 'lease' are, acknowledgedly, taxable as 'deemed sale'; it is not the case of Revenue that any portion of the consideration for 'lease' is not 'deemed sale'. As the entire rental is subject to tax as 'deemed sale', there is no scope for any portion thereof to be leviable to tax by the Union and, thereby, under Finance Act, 1994.

14. In the above circumstances, and in the light of discharge of tax liability under Finance Act, 1994 on some of the consideration earned by the assessee, the scope for subjecting 'lease rental' to tax, as proposed in the show cause notice, cannot sustain in the absence of a valid machinery provision recognized in the taxing statute. Accordingly, the impugned orders are set aside and appeal of assessee allowed while appeal of Revenue stands dismissed."

8.2 We further find that Co-ordinate Bench of this Tribunal in a similar set of circumstances in the case of *Orix Auto Infrastructure Services Ltd.* (supra) had concluded that 'operating lease agreement' for providing motor vehicles by the appellant company to their customers, is squarely covered under the scope of 'deemed sale'. The relevant paragraphs in the above order is extracted below:

"4.10 In view of our discussions as above we would answer the question at (i) in para 4.2, in favour of the appellant holding that "operating lease agreement" is squarely a case of deemed sale as per Article 366 (29A) (d) of the Constitution of India."

9. In view of the foregoing discussions and analysis, we find that there are no strong grounds to hold that the activities undertaken by the appellants in terms of Operation Lease agreement/Master Lease Agreement for providing motor vehicles to their customers, is covered under the scope of levy of service tax, inasmuch as such activity is squarely covered under the 'deemed sale' as per Article 366 (29A) (d) of the Constitution of India, in terms of the judgement given by the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited* (supra). Consequently the demands of service tax and imposition of penalties confirmed in the impugned order is not legally sustainable.

10. In view of the above, we are of the considered view that the adjudged demands confirmed on the appellants in the impugned order dated 04.11.2015 is liable to be set aside. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 11.03.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)