

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

SERVICE TAX APPEAL No.42087 OF 2014

(Arising out of Order-in-Appeal No.113/2014-ST dated 13.05.2014 passed by Commissioner of Central Excise (Appeals), No.1, Foulkes Compound, Anaimedu, Salem 636 001)

**M/s. Tamil Nadu State Transport
Corporation (Salem) Ltd.**

No.12, Ramakrishna Road,
Salem 636 007.

... Appellant

Versus

The Commissioner of GST & Central Excise,

Salem Commissionerate
No.1, Foulkes Compound, Anaimedu,
Salem 636 001.

...Respondent

APPEARANCE :

Mr. M.N. Bharathi, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE Mr. S.S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 16.01.2024
DATE OF DECISION : 25.01.2024**

FINAL ORDER No.40094/2024**ORDER : Per S.S. GARG**

The present appeal is directed against the impugned order dt. 13.5.2014 passed by the Commissioner (Appeals), Salem whereby he has upheld the Order-in-Original and dismissed the appeal of the appellant.

2. Briefly, the facts of the present case are that the appellant is a 100% owned undertaking of Government of Tamil Nadu providing transport facility to the public and are registered with the Service Tax Department and has been paying service tax on GTA service and selling of space service and are filing regularly ST-3 returns. The Revenue entertained a view that the appellant is evading payment of service tax by providing vehicles to the Government Departments, Sister concerns and private parties. Subsequently, show cause notice dated 12.04.2013 was issued alleging that the appellant have provided Rent-a-Cab operator services without getting appropriate amendment in Service Tax Registration certificate and without paying service tax and without filing prescribed half yearly returns in respect of the services with intention to evade payment of service tax and accordingly proposed to demand a sum of Rs.1,38,571/- as service tax along with interest. It was also proposed to impose penalties. Appellant filed a detailed reply to the SCN and after

following due process, the original authority confirmed the demand in the SCN amounting to Rs.1,38,571/- with appropriate interest and also imposed penalty of Rs.2,77,142/- under Section 78, Rs.37,000/- under Section 76 and Rs.5000/- under Section 77 (1) (a) and Rs.5000/- under Section 77 (2) of Finance Act, 1944. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) rejected the same. Hence the present appeal.

3. Heard both sides and perused the materials on record.

4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on identical issue. He further submits that the appellant is a State Government Corporation owned by the State of Tamil Nadu and they have no intention to evade payment of legitimate tax due to the Central Government and it is only a question of interpretation of the statutory provision and the appellants were having bonafide belief that they are not covered by the entry Rent-a-Cab operator scheme. He further submits that the adjudicating authority and the appellate authority have not considered the submissions made by the appellant. He further submits that as per the statutory definition, 'Rent-a-Cab operator scheme' means any person engaged in the business of renting of cabs. He further submits that appellants are not "engaged in renting a cab operator scheme" and does not fall in the said definition. He further submits that a person can be said to be engaged in the

business of renting of cabs, if he carries on such a business not as an isolated act or transaction, but as an organized and fairly continuous activity. He further submits that the issue is no more *res integra* and has been considered by various Benches of the Tribunal and in support of his submissions he relied upon the following decisions :

- (a) *Bangalore Metropolitan Transport Corpn. Vs CST, Bangalore - 2015 (38) STR 976 (Tri.-Bang)*
- (b) *Commissioner Vs Bangalore Metropolitan Transport Corpn. - 2015 (38) STR 1429 (SC)*
- (c) *Gujarat State Road Transport Corporation Vs CCE & ST Ahmedabad 2020 (34) GSTL 526 (Tri.-Ahmd.)*

5. On the other hand, Ld. A.R reiterates the findings in the impugned order.

6. After considering the submissions of both the parties and perusal of the materials on record, we find that the appellant is a State Transport Corporation owned by Tamil Nadu Government and they do not fall under the definition of Rent-a-Cab Scheme Operator. Further, we find that the issue is no more *res integra* and has been settled by decisions of the co-ordinate Bench of the Tribunal in the case of *Bangalore Metropolitan Transport Corpn. Vs CST Bangalore* reported in 2015 (38) STR 976 (Tri.-Bang.). We also find that the said judgement of the Tribunal has been upheld by the Hon'ble Supreme Court as reported in 2015 (38) STR 1429 (SC). Further, on the very same issue, the CESTAT Ahmedabad Bench after relying upon the *Bangalore Metropolitan Transport Corpn.* case has allowed the appeal of the Gujarat State Road Transport Corporation

as reported in 2020 (934) GSTL 526 (Tri.-Ahmd.). Here, it is relevant to reproduce the relevant findings of *Bangalore Metropolitan Transport Corpn.* which is contained in paras 5 & 6 and are reproduced herein below :

“5. The main issue that is to be decided is whether the service of providing buses on contract basis by the appellant to various factories and firms can be classified as rent-a-cab service or not. It would be appropriate to reproduce the relevant legal provisions before we proceed further.

The definition of ‘cab’ under Section 65(20) was amended w.e.f. 1-5-2007 by the Finance Act, 2007. As a result of this amendment, the scope of taxable Service Tax extended to include the renting of motor vehicles capable of carrying more than twelve passengers.

The taxable service in relation to renting of the cabs has been defined under Section 65(105) (o) of the Finance Act, 1994 which reads as under :-

“taxable service” means any service provided or to be provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab.

The main ingredients of the above service as per the above Section are :

- (a) the service provided to any person
- (b) the service provided by a rent-a-cab scheme operator
- (c) the service provided in relation to renting of cab.

The rent-a-cab scheme operator is defined under Section 65(91) of Finance Act, 1994. The definition reads as under :-

Rent-a-cab scheme operator means any person engaged in the business of renting of cabs.

Accordingly, any person who in the normal course does a business of renting of cabs will be taxable under this section.

Section 65(20) of the Finance Act, 1994 defines a “cab” to mean -

- (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 sub-clause (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;

The maxicab has been defined under Section 65(70) and motorcab has been defined under Section 65(71) of the Finance Act, 1994.

The motor vehicle has been defined under Section 65(73) of the said Act which reads as under :-

“motor vehicle” has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988), which is :

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres”

6. We find that rent-a-cab scheme operator according to the provisions of Finance Act means any person engaged in the business of renting of cabs. The first question to be determined therefore is whether BMTC can be considered as engaged in the business of renting of cabs. It has to be borne in mind that while defining taxable service, there has been a conscious effort in indicating the directed service providers for the purpose of levy of Service Tax. In many of the definitions, we find the definition provides that services provided by any person to any person. In such a case, any person who has provided the service would become liable if the service itself comes within the definition of taxable service. In some cases, the word service provided by a commercial concern to any person is used. In such cases, the provider of service has to be a commercial entity and therefore a charitable trust may not be liable. In this case, the words used are services provided by a rent-a-cab scheme operator. Therefore firstly we have to decide whether BMTC can be considered as a rent-a-cab operator which according to the Finance Act means any person engaged in the business of renting of cabs. Apparently BMTC cannot be considered to be a person engaged in renting of cab service at all. The business undertaken by BMTC is to provide bus facility/transport facility to the citizens of Bangalore city and the main activity is running the buses in the city for the convenience of citizens and not a rent-a-cab scheme operation. We find that the definition itself excludes BMTC from the category of service providers.”

Since this decision has been upheld by the Hon'ble Supreme Court by dismissing the appeal of the Department as cited (supra). In view of these facts, by following the ratio of decisions of the above said cases, we are of the view that the impugned order is not sustainable in law and we therefore set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Pronounced in court on 25.01.2024)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(S.S. GARG)
Member (Judicial)

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