

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

Service Tax Appeal No. 30350 of 2023(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-001-APP-049-22-23 dated 25.06.2022
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)**Theegala Naga Venkata Padmavati** .. **APPELLANT**D.No. 10-38,
Old Sabbavaram Road,
Inside Railway Gate,
Kotavalasa,
Vizianagaram,
Andhra Pradesh - 535 183.*VERSUS***Commissioner of Central Tax** .. **RESPONDENT**
Visakhapatnam- GSTGST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh - 530 035.**AND****Service Tax Appeal No. 30351 of 2023**(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-001-APP-048-22-23 dated 25.06.2022
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)**T Gunna Mahalaxmi** .. **APPELLANT**C/o T.K. Venkateshwarlu,
Flat No. F6,
Sri Ramnagar Panchajanya
Apartment,
Near Barat Defense Academy,
Kotavalasa, Vizianagaram,
Andhra Pradesh - 535 183.*VERSUS***Commissioner of Central Tax** .. **RESPONDENT**
Visakhapatnam- GSTGST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh - 530 035.**APPEARANCE:**

Shri Ashish Kumar Agarwal, CA for the Appellant.

Shri B Sangameshwar Rao, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**FINAL ORDER No. A/30381-30382/2023**Date of Hearing:05.09.2023
Date of Decision:09.11.2023**[ORDER PER: ANIL CHOUDHARY]**

The issue involved in these appeals is whether hiring of vehicles/buses by appellants to Andhra Pradesh State Road Transport Corporation (APSRTC) falls under "Rent a Cab" service and thus chargeable to service tax.

2. The brief facts are that the appellants are owner of buses which have been hired to APSRTC. The appellant is also member of 'Hire Bus Owners Welfare Association' which is a registered Association. APSRTC is a Public Sector Undertaking providing transportation services in the state of Andhra Pradesh. Since the year 2002-03 in view of the enormous demand for paid transport, the corporation to meet the demand introduced hire bus system. In the system of hiring private buses, the RTC was only required to depute the conductor for collecting the fare or transport charges. It was the duty of the appellant/hirer to provide driver etc., as well as maintaining the bus in good running condition. Further, the appellant is required to bear all expenses including fuel. If the appellant fails to maintain the bus in good condition, RTC can impose penalty. Pursuant to Tender notice issued in March 2007, appellant purchased new vehicle as per the specifications of the RTC and got the bus registered as Omni bus/contract carriage. Thereafter, RTC got the hired bus registered with the concerned RTA as RTC vehicle. Further, RTC took permit and paid the road tax and also reimbursed insurance(s), provident fund. Further, RTC also reimbursed the amount of VAT, payable on deemed sale (hire charges).

3. Subsequently by Finance Act 2007 with effect from 01.06.2007 the Section 65(20) was substituted as under, - expanding the scope of coverage 'Cab' have been defined in Section 65(20) of the Finance Act 1994 as -

- i) A motor cab or
- ii) A maxi cab or
- iii) Any motor vehicle constructed or adapted to carry 'more than 12 passengers', excluding the driver, for hire or reward;

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

4. As per section 65(91) of the Finance Act rent-a-cab scheme operator means "any person engaged in the business of renting of cabs" further Section 65(105)(o) of the Finance Act defines 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.

5. Show cause notice was issued by the Department invoking the extended period of limitation proposing to demand service tax on the hire charges received by the appellant from APSRTC. The appellant had filed their defense reply interalia mentions that the chargability of service tax is under challenge by their Association namely - 'Hire Bus Owners welfare Association' in Writ Petition No. 12557/2013 before the Hon'ble Andhra Pradesh High Court, and the Hon'ble High Court have granted stay from collection of service tax and the writ is pending for final adjudication. The notice of hearing was received during the COVID period. It could not be attended due to family problems and disturbances due to COVID infection. However the Deputy Commissioner confirmed the demand of Service Tax of Rs. 79,265/- and also imposed equal amount of penalty under Section 77, further penalty imposed under Section 77(1A) and 77(2). Adjudicating Authority ignored the stay granted by Hon'ble High Court, and relying on the ruling of the Bangalore Bench of the Tribunal in the case of S K Kareemun reported at [2015-TIOL-80-CESTAT-Bangalore], confirmed the demand.

6. Being aggrieved appellant preferred appeal before the Commissioner (Appeals) which was dismissed, upholding the adjudication order. Being aggrieved the appellant is before the Tribunal.

7. Assailing the impugned order, Learned Counsel for the appellant Shri Ashish Kumar Agarwal interalia urges that the Appellant has contented that their activity falls under "Transfer of Right to Use", a deemed sale of goods under Article 366 (29A)(d) of Constitution.

8. The Learned Counsel for Appellant has submitted a copy of the Writ Petition filed before Hon'ble High Court at Hyderabad along with copy of various circulars, memos issued by Commercial Tax Department, Andhra Pradesh and APSRTC, clarifying that the hiring of vehicle to APSRTC falls under - 'transfer of right to use'.

9. The Learned AR for Appellant further place reliance on judgement of Hon'ble High Court of Andhra Pradesh in M/s G S Lamba & Sons Vs. State of Andhra Pradesh [2012-TIOL-49-HC-AP-CT] in support of his argument along with copy of Tender document issued by APSRTC, wherein following brief clauses are relied upon:

- i) During the tenure of agreement the Vehicle cannot be used for any other purpose other than hiring of the same to APSRTC
- ii) During the tenure of agreement the vehicle shall be painted in color scheme of APSRTC and logo of APSRTC shall be placed on the Bus
- iii) During the tenure of agreement the insurance and road tax shall be borne by the APSRTC

10. The Learned DR has supported the orders of Adjudicating officer and placed reliance on orders of CESTAT Bangalore Bench in S K Kareemun (supra) wherein SLP against the same is dismissed by Hon'ble Supreme Court. He further places reliance on judgement of Hon'ble High Court of Delhi in Hari Durga Travels Vs. Commissioner of Trade & Taxes, Delhi [2015 (95) TMI 461 – Delhi HC] in support of order.

11. Now the issue of adjudication is - whether the activity of Hiring of Vehicles by Appellant falls under "Rent a Cab Service" or "Transfer of right to use of Tangible Goods". We have gone through the judgements placed by both the parties along with various circulars, Memo, Circular issued by Commercial Taxes of Andhra Pradesh and APSRTC in relation to hiring of Vehicles. We have gone through the terms of agreement / tender which clearly demonstrate that during the course of agreement effective control over vehicle is with APSRTC, and we found that in the light of clarification issued by Central Government in D.O.F No 344/1/2008 – TRU dated 29-02-2008, has clarified that "Supply of tangible goods for use and leviable to VAT / Sales Tax as deemed Sales of Goods, is not covered under the scope of the Service" and hence the present activity of Hiring of Vehicles to APSRTC cannot be covered under "Rent a Cab Service", but is covered under "Transfer of Right to Use", which is deemed sale and liable to Sales Tax.

12. In view of the aforementioned findings and observations, we hold that the activity in question provided by the Appellant, is in the nature of "Transfer of Right to Use" and not "Rent a Cab". Accordingly, we allow the

appeals and set aside the Impugned Order. The Appellants shall be entitled to consequential benefits in accordance with law.

(Order Pronounced in open court on 09.11.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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