

## Customs, Excise & Service Tax Appellate Tribunal

### West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 01

### Service Tax Appeal No. 10094 of 2018

[Arising Out Of OIA-AHM-EXCUS-001-APP-094-17-18 Dated- 25/09/2017 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax- AHMEDABAD)

#### **Shree Security**

(Proprietor- Sanjay Gandlal Patel)  
306, Jalaram Complex, Geeta Mandir Road, Old Lati Bazar,  
Ahmedabad, Gujarat

**.....Appellant**

*VERSUS*

#### **C.S.T.-Service Tax - Ahmedabad**

7 th Floor, Central Excise Bhawan, Nr. Polytechnic  
CENTRAL EXCISE BHAVAN, AMBAWADI,  
AHMEDABAD, GUJARAT-380015

**.....Respondent**

#### **APPEARANCE:**

Shri. Devashish K Trivedi, Advocate for the Appellant

Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)**  
**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER TECHNICAL)**

**Final Order No. 10564 /2025**

DATE OF HEARING: 13.05.2025

DATE OF DECISION: 17.07.2025

#### **SOMESH ARORA**

#### **Brief fact:**

1. The appellant was engaged in supply of "Cash Van" on rental basis along with drivers to various Banks & their branches to carry cash from one branch to another and for that, they were charging monthly rent. Appellant raised Invoices on the basis of kilometres the Cash Van had travelled during the month/period. In the balance-sheet for the relevant period, the appellant have recorded income under the head "Cash Van Rent Income". Agreement

was also there for supply of Cash Van with Driver with charges on per km basis. The issue of non payment of service tax for the period April 2010 to June 2012 came to light during audit of the record of the Appellant. The Appellant had obtained the Service Tax registration number AFAP P2570F SD002 on 31.07.2012. The Department classified the said service as "SUPPLY OF TANGIBLE GOODS" services mentioned under Section 65(105)(zzzzj) of Finance Act, 1994 and demanded Service tax of Rs. 33,31,038/- for the period from April 2010 to June 2012 vide SCN dated 20.10.2015. Appellant was of the view that the said service was not taxable as it is transportation of cash service. The Adjudicating authority held that the appellant was rendering "supply of tangible goods service" and confirmed the service tax of Rs. 33,31,038/- demanded in the SCN dated 20.10.2015 along with Interest u/s 75 of the Finance Act, 1994 and imposed equal penalty under Section 78 besides, Penalty of Rs. 10,000/- or Rs. 200 per day whichever is higher under section 77(1)(a) and a penalty of Rs. 1000/- under Section 77(2) of Finance Act, 1994.

1.2 The Commissioner (Appeals) upheld the order of the Adjudicating authority and rejected the appeal filed by the appellant. Hence, the present appeal where the issue to be decided is "Whether or not the appellant has provided 'supply of tangible goods service' to the bank".

2. The contract between the bank and the appellant mentions provision of supply of cash van with driver for transportation of cash from one bank to another. Monthly rate for usage of Cash Van was mentioned for maximum kilometre running up to 2000 kilometres and extra charges thereafter as specified in contract. While the appellant considered that the services provided by them was of "transportation of cash" but the department is of the view that this is not GTA service as no consignment note is issued by the appellant and payment is made on the basis of kilometre use and not on the amount of cash transported. As per the department, terms and conditions of the agreement show that the primary purpose of the contract was "supply

cash van with driver" in which cash was carried under the bank's supervision and control and therefore, the services were in the nature of supply of tangible goods. Department also justified suppression as the appellant neither took service tax registration with the department prior to 31.07.2012 nor filed any service tax returns (ST-3).

3. The Learned Advocate in his arguments has taken the following grounds:-

3.1 During the period from April, 2010 to June, 2012, Appellant had participated in tender process and submitted their bid. Consequently, work orders were issued by various Banks whereby, the Appellant had been asked to provide "Cash Delivery Van" to the Banks, which he did.

3.2 The Appellant also provided 'Security Services' for which, they were registered with the Service Tax Department. However, they were not paying any service tax on supply of "Cash Delivery Van" under aforesaid contracts.

3.3 Investigation was initiated by the preventive wing of the Central Excise and Service Tax Department during which they submitted all the relevant papers with the said investigating officers but there was no action for more than one (01) year. Subsequently, audit of their records was conducted on 5<sup>th</sup> August, 2015 after which Show-cause Notice dated 20.10.2015 came to be issued. During adjudication, the charges in the Show-cause Notice were confirmed by the authorities and further upheld in Order-in-Appeal dated 25.09.2017 passed by the Commissioner (Appeals). Hence, they filed appeal before this Hon'ble Tribunal.

3.4 The Department wants to classify the services of providing 'Cash Delivery Van' under aforesaid work orders under 'Supply of Tangible Goods Service'. A reading of the definition of this service as incorporated in Section 65 (105)(zzzzj) of the Finance Act read with Circular/Letter D.O.F No.334/1/2008-TRU dated 29.02.2008 would show that said service would get attracted only when the goods are supplied without transferring right of possession and effective control of such goods. The said circular incorporates

that "Transfer of Right to Use any goods" is leviable to Sales Tax / VAT as deemed sale of goods [Article 366 (29A)(d) of Constitution of India]. Transfer of Right to Use involves transfer of both possession and control of goods to the user of such goods. Service Tax is payable only in cases where there is no deemed sale and no Sales Tax/VAT is payable.

3.5 When a cash van is provided with a driver, under a contract entered in to with the Bank, the driver will no doubt have the custody of the van but the bank will have the possession and effective control of the van as the driver has to drive the van as per the bank's instructions. This may contrast with a situation where there is no contract but bank randomly requests owner/driver of a cash van to transport cash which he may deny in absence of any contract. In the present case, since there is a contract, the owner/driver cannot refuse to transport cash in the cash van according to his whims and fancies. Therefore, clearly the bank has possession and effective control of the cash van.

3.6 A mirror image of the aforesaid Service Tax provision was available in the Sales Tax provisions. All cases where there was effective control and possession by a person/institute which took vehicles on rent, were considered as deemed sale'. Since it is so, the Sales Tax authorities used to demand sales tax from the owner of the vehicle on the ground that since possession and effective control was passed on, the transaction attracted Sales Tax. Several transactions were tested by various Hon'ble Courts to find out whether possession and effective control was passed on. After detailed analysis of the respective transactions, it was found that important elements required for a transaction to be covered under the scope of 'deemed sale' were missing in those cases and therefore, respective transaction would not attract Sales Tax. However, said judgements are important and are relied by the appellant to show that the present transaction is squarely covered under the scope of 'deemed sale' attracting Sales Tax / VAT and hence transaction in question does not attract Service Tax.

3.7 The said judgments are as follows: -

**a. Rashtriya Ispat Nigam Ltd. V/s. Commercial Tax Officer, 1989 SCC OnLine AP 413: (1990) 77 STC 182.**

Hon'ble Court was pleased to refer to Volume 87 Page 892 of Corpus Juris Secundum. It was observed that when a taxi cab is hired under 'Rent-a-Car Scheme, and a cab is provided, usually driver accompanies the cab; where the driver will have the custody of the car though the hirer will have the possession and effective control of the cab. This may be contrasted with the case when a taxi car is hired for going from one place to another. Here, the driver will have both custody as well as possession; what is provided is service on hire. In the former case, there was effective control of the hirer on the cab whereas in the latter case, it is lacking.

**b. Krushna Chandra Behera & Anr V/s. State of Odissa & Ors (1991) 83 STC 325: 1990 SCC OnLine Ori 391**

**c. Great Eastern Shipping Co. V/s. State of Karnataka & Ors (2004) 136 STC 519: 2004 SCC OnLine Kar 45.**

In both these judgements, Salmond's Jurisprudence was relied. It is held that even if driver is provided by the owner of the vehicle, if said driver has to follow the instructions of the person/institution who has taken vehicle on hire, the effective control and possession is said to be transferred. In such case, Sales Tax is payable.

3.8 In the present case, a reading of the contract would show that the effective control and possession of the "Cash Delivery Van" would be passed on to the Bank. It being so, the activity would not be covered under the scope of "Supply of Tangible Goods Service" as the same would be considered as 'deemed sale'.

3.9 Without prejudice to the aforesaid submission, Learned Advocate submitted that even otherwise also, the demand fails as it is confirmed under "Supply of Tangible Goods Service". He drew our attention to

following judgements/decisions where service was classified by the department as Security Service' but Hon'ble Tribunal held that the service was "Cash Van Service and not the Security Service". It set aside the demand as wrong classification was made by the department and demand was wrongly confirmed. The judgements are as follows: -

**a. Arman Khan V/s. Commissioner of Central Excise & Service Tax, Lucknow -2019 (25) GSTL 103 (Tri-All.)**

**b. Final Order No. 72386-72388/2018 dated 19.09.2018 In case of M/s. Federal Security Pvt. Ltd. V/s. Commissioner of Central Excise & Service Tax, Lucknow**

3.10 If aforesaid judgements of Hon'ble CESTAT are followed in the present case and classification of the service is held as 'Cash Van Service', then, due to wrong classification of service confirmation of demand under "Supply of Tangible Goods Service" deserves to be quashed and set aside following ratio of law laid down in aforesaid judgements.

4. The learned AR reiterates the order of the lower authorities and states that contract agreement was for supply of cash van with drivers. The appellant's argument that it was transportation of cash service is not correct as they have not submitted any proof that bank hands over cash to them to deliver to another bank. He also defended invocation of extended period in this case on the ground that appellant suppressed the facts of providing cash van service to banks from the department. As there was supply of tangible goods service in the case, service tax has correctly been confirmed against the appellant.

5. Heard both the sides. Before proceeding in the matter, a look on the terms and conditions agreed to between the bank and the appellant (in the case of SBI) is must, which are reproduced below: -

**TERMS AND CONDITIONS**

1. Cash Van to be fabricated as per New Bank guide lines on make Tata/Mahindra low models only. Cash enclosure will be in the middle of both the Armed Guards.
2. Cash Van will be required for CAC-Jamnagar and will be kept there.
3. Cash Van to be fitted with alarm system as per RBI norms.
4. You will be paid Rs- 25000/- for 1500 K.M., extra K.M. will be paid as per Rs.10.00 per k.m. NO Service Tax will be paid
5. Cash to be placed in the mid of the Cash Van. Thus guarded by Armed Guards on both the sides
6. All the doors of Cash Van to have locks, which can operate from both the sides. Collapsible grill having arrangements to put 02 locks, alldrops locker to be fitted at the rear door, for double locking.
7. Glasses of windows should have solar film of R.T.O. approved black colour to avoid inside view.
8. Glasses of wind screen and windows should be covered with thick wire mesh, which should have slot for firing of weapons from inside.
9. Securing of the cash boxes with the vans, thick iron chains should be provided with big pad locks.
10. The Cash Van should be "CASH VAN passing, preferably and have comprehensive insurance covering all risks etc. Accident coverage will be the owner's responsibility The owner should have service tax registration.
11. The owner will have to provide alternate vehicle in case of failure, break down or Servicing etc.
- 12, Ex-servicemen is preferred as Drivers with a valid driving licence. The drivers/stand by driver verification should be done by the POLICE AUTHORITY, a stand by driver also should be there in case of need.
13. The Cash Van will be required on all working days from 0930 HRS to 1900 HRS. However, its services may be required on Sundays/Holidays, for this, no additional charges will be given. Moreover, on certain occasions Van/Car can be used for late hours. For this purpose, no additional charges will be given. Cash Van will be parked in the Bank's premises after cash remittance.
- 14 Kilometer will be counted from our reporting branch/office. The entries to this effect should be maintained in a log book on daily basis and to be signed by two officers, nominated officer on the Cash Van and counter signed by the Branch Manager.



15. *Payment of salary to the drivers and all other perquisites as applicable will be owner's responsibility. No extra payment will be made for this purpose.*

16. *All fuel expenses of diesel, engine oil, lubricants & maintenance/wear-tear of the vehicles will be borne by the owner. If there is hike or reduction in diesel price by 5% then, after 02 years that difference shall be adjusted.*

17. *Bank will have the right to use the vehicles for cash remittance/ATM cash remittance or for other purpose as desired by the Bank.*

18. *Quarterly surprise check of the Cash Van/Related Documents/Drivers provided/Route followed/K.Ms. recorded by the Driver, will be claimed by the Security Officer, and if found not appropriate, will be taken seriously.*

19. *The contract will be terminated in case of unsatisfactory service or detrimental to the interest of the Bank after giving 15 days notice.*

20. *The party shall have right to discontinue the contract by giving 30 days notice the Bank*

21. *The contract will be for 03 years but renewable on satisfaction, service provided by the provider.*

22. *Terms and conditions not covered under this agreement, the decision taken by the bank will be final and binding.*

5.1 Above clearly shows that the Cash Van required by the bank was to be specially designed for safe carriage of cash. It provides finer details like make of the vehicle, internal fittings as well as external modifications. It even prescribes preference for ex-service man as driver/ stand by driver, after proper police verification. The contract obligates the owner of the cash van to provide alternate vehicle in case of failure, break down or servicing etc., of the existing one and also the stand by driver in case of need. Normal working hours of the cash van were specified with caveat to use the vehicle on Sundays/holidays and even on late hours, if needed, without extra charges. For payment of charges, proper log book to be maintained for recording the kilometres which are to be counted from the reporting branch/office. Owner of the vehicle to bear all running expenses such as diesel, engine oil, lubricant, maintenance charges, driver's salary etc.,



5.2. We find that Hon'ble Supreme Court in the case Bharat Sanchar Nigam Limited-(2006 (3) SCC 1 = 2006 (2) STR. 101 (SC) in para 97 expounded as to what would constitute transfer of "right to use" and held as under: -

*"97. To constitute a transaction for the transfer of the right to use the goods, the transaction must have the following attributes:*

- (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 licences required therefore should be available to the transferee*
- (d) for the period during which the transferee has such legal right, it has to be 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 rights to others."*

5.3 Thus, to decide whether there is a "deemed sale" or "provision of service", in a case, it has to be tested on five parameters as mentioned by Hon'ble Supreme Court in BSNL case. The contract will be covered as deemed sale if all the 5 conditions are fulfilled. The Apex Court has made a distinction between **transferring the right to use** and merely a **license to use goods**. In every case, where the owner of the goods permits another person to use goods, the transaction need not be of the transfer of the right to use the goods. It can be simply a licence to use the goods which may not amount to transfer of the right to use.

5.4 We further find that in the case of K P Mozika Vs. ONGC reported at 2024 (388) ELT 11 (S.C), the issue before the Apex court was whether in hiring of cranes, truck mounted all terrain hydraulic cranes, trailers etc., was there transfer of right to use goods? In this case, the contract envisages that when a crane is defective, another crane of similar specification must be offered as a replacement by the contractor. Therefore, the contract does not remain confined to only those cranes described in the agreement but the contractor has an obligation to replace the crane. As per the contract, the

contractor must make adequate and proper arrangements for fuel, lubricant and other consumables etc in relation to the cranes and other items. The contractor shall look after the repair and maintenance of the cranes. The specified cranes contracted by ONGC to comply with the requirement of the Motor Vehicles Act, 1988 and the Rules and Regulations framed there under. Similarly, the crew members must be legally competent and should hold valid licenses. The contract also stipulated that the contractor shall safeguard his **interest** through comprehensive insurance at his own cost and ONGC shall not be liable to pay any amount towards the insurance. The insurance taken by the contractor shall cover all the risks of what so ever nature to any third party, any equipment/property/personnel of the contractor and damage to the property or personnel of ONGC. The contractor to register himself under the **contract Labour** (Regulation and Abolition ) Act, 1970. After using cranes for a specified period, as mentioned in the contract, the contractor has to park the cranes on the sites provided by ONGC at the risk of the contractor.

5.5 In para 35 of the said order, Hon'ble Court observed that the contract is for providing the service of cranes to ONGC for the reason that the transferee (ONGC) is not required to face legal consequences for using the cranes supplied by the contractor. It thus held that the tests laid down in para 97 of the BSNL decision are not fulfilled in the case. Therefore, on conjoint reading of the aforesaid clauses, it observed that the use of cranes provided by the contractor to ONGC will be by way of a permissive use. The relevant Para 35, 42, 44 of the said decision are reproduced below:

*"35. On a conjoint reading of the aforesaid terms of the contract, it is apparent that the contractor has an option of replacing the cranes in case one of the cranes was not working properly. Only the contractor is liable to take care of the legal consequences of using the cranes. The contractor must maintain the cranes, and it is for the contractor to pay for consumables like fuel, oil, etc. Even the cranes must be moved and operated by the crew members appointed by the contractor. Moreover, in case of any mishap or accident in connection with the cranes or connection with the use of the cranes or as a consequence thereof, the entire liability will be of the contractor and not of the ONGC. Thus, in short, the contract is for providing the service of cranes to ONGC. The reason is that the transferee (ONGC) is not required to face legal*

*consequences for using the cranes supplied by the contractor. Therefore, the tests laid down in clauses (c) and (d) of Paragraph 97 of the decision of Dr. A.R. Laxmanan, J. are not fulfilled in this case. Moreover, on a conjoint reading of the aforesaid clauses, it appears that the use of the cranes provided by the contractor to ONGC will be by way of only a permissive use. Though the cranes are used for carrying out the work as suggested by ONGC, the entire control over the cranes is retained by the contractor, inasmuch as it is the contractor who provides crew members for operating the cranes, it is the contractor who has to pay for fuel, oil, etc. and for maintenance of any loss or damage to the equipment of the contractor, staff of the contractor, any third party and staff and property of ONGC. Therefore, we find that as regards the contract to provide cranes, the finding of the High Court that there was a transfer of the right to use cranes was not correct as the transactions do not satisfy all the five tests referred to above.*

42. *Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the control of the goods by the user. When the substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of Section 65(105)(zzzzj) of the Finance Act after the said provision came into force.*

#### **Conclusion**

44. *Accordingly, we allow all the appeals of the assesseees by holding that the contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same. Civil Appeal No. 3580 of 2017 preferred by the Union of India is disposed of in view of the earlier findings with the liberty to the Union of India to initiate proceedings, if any, for recovery of service tax in accordance with law."*

5.6 In the instant case, we observe that Sr. No 10 the contract provides that the **owner should have service tax registration**. Specially designed vehicles have been contracted to be provided by the owner to the bank. The vehicle owner is under obligation to make alternate vehicle available to the bank in case of failure, break down or servicing etc. The contractor to provide driver to operate the cash van and the preferred choice was ex-service man. The owner to also provide stand by driver in case of some emergency. The vehicle owner to pay salary and other perquisites as applicable to the driver without any extra payment for this purpose. He has to make all expenses towards running fuel, lubricant, engine oil etc. Maintenance of the vehicle including its wear and tear is the responsibility of the vehicle owner. In case of unsatisfactory service or service detrimental to the interest of bank, the bank could terminate the contract by giving 15 days

notice. The vehicle owner on the other hand also has right to discontinue the contract by giving 30 days notice. The terms of the contract, in this case are similar to the ONGC case cited supra. Here also, though the cash van is used for carrying out the work as per the requirement of the bank but the control over the cash van is retained by the contractor who provides the driver, pays for the fuel and its maintenance and bears all risks and accident coverage etc. Therefore, it transpires that the present case is a case of permissive use of cash van and not the transfer of right to use. Consequently, we find that the instant case is not covered as deemed sale as claimed by the appellant and falls under service tax under "supply of tangible goods service". Otherwise also, the appellant has not produced any evidence during proceedings of the case that they have paid any VAT on the said the transactions treating the same as deemed sale.

5.7 The decisions in the case of Arman Khan V.s C.C.E & S.T, Lacknow and M/s. Federal Security Pvt. Ltd. Vs. CCE & S.T, Lucknow cited supra, relied upon by the learned Advocate are not helping the appellant's cause as these are on different footing. The issue in both these cases relates to classification of "security guard service" provided to banks along with cash van and the Tribunal held that provision of security guard along with cash van is covered under "cash van service" and cannot be termed as "security services" as the dominant service is transportation of cash from one place to another through these cash vans. The issue in hand relates to classification of cash van service provided by the appellant to the bank (s) which as discussed above, clearly falls under "Supply of tangible goods services".

5.8 Regarding invocation of extended period, the department has established that the appellant neither disclosed to the department the fact of providing these services to the bank(s) nor did they take registration for the said service. They also did not file prescribed the ST-3 returns Thus, there was no occasion for the department to know the activity of the appellant.

Therefore, agreeing with the contention of the department, we hold that extended period of limitation is available to the department. The show cause notice is not barred by limitation.

5.9 Regarding the appellant's contention to allow cum duty benefit, we find that at Sr. 4 of the terms and conditions of the agreement, it is clearly mentioned that "no service tax will be paid" which means that the value of service received by the appellant includes the element of service tax also. We, therefore, allow this plea of the appellant and remand the matter to the adjudicating authority for quantifying within 8 weeks from the receipt of this order, the service tax liability afresh by giving cum duty benefit. Needless to say, interest and penalty shall be re-determined after quantifying the tax liability.

6. Appeal is disposed of in above terms and partly allowed by way of remand.

(Pronounced in the open court on 17.07.2025)

**(SOMESH ARORA)**  
**MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)**  
**MEMBER ( TECHNICAL )**

Prachi