Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.1 OF 2024

M/s. Sharma Heavy Lifter
Proprietary Concern
Through Mrs. Kiran Brijmohan Sharma.
Wife of Late Proprietor, Having its office at,
Bungalow No.22, Vasant Vihar, C.G. Road
Chembur (West), Mumbai-400074. …Appellant

Versus

1. The State of Maharashtra
Having its office at, Govt Pleader PWD Building,Ground floor, Bombay High Court, Mumbai: 400020.

2. The Commissioner of State Tax Maharashtra State, Having his office at GST Bhavan, 8th Floor, New Building Mazgaon,
Mumbai:400 010. …Respondents

Ms. Nikita Badheka with Mr. Parth Badheka for the Appellant.
Ms. Jyoti Chavan, Addl. GP for the Respondent - State.

CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 11th AUGUST 2026.
PRONOUNCED ON : 22nd SEPTEMBER 2026

Judgment (Per: Advait M. Sethna, J.) :-

1. By way of this Appeal, the Appellant has mounted a challenge to the order of the Maharashtra Sales Tax Tribunal, Mumbai dated 11th July 2023 passed in VAT SA/391/2025 ("*Impugned Order*" for short).

2. Heard. By consent of the parties, the Appeal is taken up for final hearing and disposal.

3. The pivotal issue for determination before the Court is whether the activity of providing cranes for hire by the Appellant tantamount to transfer of right to use of cranes under the regime of the Maharashtra Value Added Tax Act, 2002 (*"**MVAT Act**"* for short) or would constitute service falling outside the scope of the MVAT Act.

Factual Matrix:-

4. The facts relevant for adjudication of this Appeal are encapsulated below:-

5. The Appellant entered into contractual terms for hire with Hindustan Construction Company Ltd. and Era Constructions India Ltd. (*"**Companies**"* for short) dated 18th January 2005 and 31st July 2004, respectively. By the said contracts, the Appellant agreed to provide certain number of cranes, as stipulated in the contractual terms, for hire, to the said Companies. The Companies were to pay a fixed rate of Rs.3,10,000/- per month and Rs.2,50,000/- per month, respectively, as hire charges.

6. A dispute arose between the parties on the issue as to whether the hire charges/rent paid by the Companies to the Appellant should be treated as sale falling under the provisions MVAT Act or such activity should be categorized as service.

7. The matter then fell for adjudication before the Maharashtra Sales Tax Tribunal (*"**Tribunal**"* for short). The order of the Appellate Authority dated 6th June 2015 i.e. Deputy Commissioner of State Tax, was challenged by the Appellant before the Tribunal, as the case of the Respondent (Revenue) was accepted by the said Appellate Authority. The Tribunal held that the transaction/activity in the instant case would clearly attract VAT on the ground of the same being deemed sale on account of transfer of right to use the goods. Accordingly, penalty and interest were levied by the Tribunal on the Appellant vide the Impugned Order and the case of the Respondent was, thus, partly upheld.

8. Aggrieved by the order of the Tribunal, the Appellant has assailed the same in the present Appeal.

Rival Contentions:

Submissions of the Appellant:-

9. Ms. Badheka, learned counsel for the Appellant would submit that the Impugned Order dated 11th July 2023 passed by the Tribunal is unsustainable in the eyes of law on several counts.

10. Ms. Badheka would, in substance, urge that the Tribunal failed to appreciate that the activity of providing the cranes for hire by the Appellant to the Companies was at best a service and the same could never be regarded as sale under the MVAT Act. This, primarily for the reason that the ownership and effective control of the cranes hired by the Companies from the Appellant always and at all times remained with the Appellant. She would place emphasis on the contractual terms of hire executed with the Companies, *inter alia* dealing with fixed period of hire, fixed rate of hire, mobilization, de-mobilization, in support of her contention. The Tribunal, she would submit, lost sight of this vital factual position and treated the transaction as sale, thereby making the Impugned Order legally vulnerable.

11. Ms. Badheka would submit that the Tribunal erred in misconstruing the service of providing the cranes on contractual basis for hire, as transfer of right to use the cranes by referring to Section 2(24)(b)(iv) of the MVAT Act. When the effective control and ownership of the cranes, were both retained by the Appellant, by no stretch of imagination, there can be any transfer of the right to own and or use the cranes as contemplated under the MVAT Act. Consequently, in the absence of any sale in the given facts, there cannot be any MVAT leviable on the transaction, let alone penalty and interest under the Act. That is where the Tribunal had grossly erred.

12. Ms. Badheka has, in the course of her arguments, placed due reliance *inter alia*, on the following decisions in support of her contentions:-

I) ***Commissioner of Sales Tax, Maharashtra vs. Ms. General Cranes***[1];

II) ***State of Andhra Pradesh & Another vs. Rashtriya Ispat Nigam Ltd.***[2];

---

1 2015 SCC OnLine Bom 4867

2 114 STC 126

III) *State of Maharashtra vs. Sanghavi Movers Ltd.*[3];

IV) *K.P. Mozika vs. Oil and Natural Gas Corporation Ltd. & Ors.*[4];

V) *Aurobindo Highway Services v. State of Maharashtra.*[5];

According to her, the reasoning and ratio in the above decisions would clearly support the case of the Appellant. This, more particularly, when the legal right in the cranes including its ownership is retained by the Appellant, which, is duly supported by the contractual terms, executed by the Appellant with the Companies. She has also referred to the decision of the Supreme Court in ***Bharat Sanchar Nigam Ltd. and Another vs. Union of India and Others*** [6] to submit that none of the attributes, as set out in the decision to constitute transfer of right to use the goods, are present in the given facts, so as to attract MVAT under the Act.

13. Ms. Badheka would state that only the fuel for the cranes was not provided by the Appellant for the cranes on hire in view of the fact that it was not feasible/viable to shift the cranes back to the Appellant for re-fuelling, during the contractual period. However, the act of fueling the cranes, cannot in any event, be construed as transfer of ownership in the cranes by the Appellant.

14. For all the above reasons, Ms. Badheka would urge that the Appeal deserves to be allowed and the Impugned Order of the Tribunal be set aside.

---

3 128 GSTR 335

4 Civil Appeal No.3548 of 2017 December on 9th January 2024

5 MVXA No.8 of 2015 decided on 1st August 2023

6 (2006) 3 SCC 1

Submissions of the Respondent:-

15. Ms. Chavan, learned counsel for the Respondents at the outset, would emphatically refute the case projected by the Appellant. She would at first refer to Section 2(24)(b)(iv) of the MVAT Act. This to contend that the right to use the cranes for a specific period would confer the right to use the same exclusively for that period. This would tantamount to transfer of possession in the cranes in favour of the Companies so as to attract MVAT, under the said provision.

16. Ms. Chavan has specifically referred to the contract dated 18th January 2005 entered into by the Appellant with Hindustan Construction Co. Ltd. to submit that the cranes would be provided at a charge of Rs.3,10,000/- per month, round the clock, for 28 working days and any working hours, beyond 280 hours per month, shall be paid on a pro-rata basis. She would then refer to a similar contract entered by and in between Era Constructions (India) Ltd. and the Appellant, dated 31st July 2004 where the cranes were hired at a charge of Rs.2,50,000/- per month for 10 working hours per day to contend that one of the conditions in the contract would specifically stipulate that if at any time the equipment or the operator provided were found to be not up to the mark, the Company reserved the right to ask for replacement forthwith without any additional costs to the Appellant providing such cranes. Ms. Chavan has also referred to the clauses in the said contract that provide for mobilization and de-mobilization to submit that even contractually, the Company which hired the cranes from the Appellant became owner of the said cranes for that period. For such reason, there is a clear transfer of right to use the cranes attracting MVAT under the provisions of Section 2(24)(b)(iv) of the Act.

17. Ms. Chavan, would emphatically rely on the decision of the Supreme Court in ***Bharat Sanchar Nigam Ltd.*** (Supra), more particularly, on paragraph 97 thereof, to urge that the transaction in the given case would partake all attributes of sale to the Companies by the Appellant, which necessities transfer of right to use the goods. In view thereof, the transaction in the given case would clearly attract levy of MVAT, under the Act.

18. Ms. Chavan in rejoinder would submit that all decisions cited by Ms. Badheka are clearly distinguishable. This for the reason that considering the terms of the contract, in the given case, clearly establish the transfer of right in favour of the Companies, to use the cranes. According to Ms. Chavan, here is a situation where even under the contractual terms, evidently there is a transfer of right to use the cranes, the possession and control of which remains with the Companies. The provisions of the Act would, therefore, clearly apply attracting levy of MVAT, in terms of paragraph 97 of the Supreme Court decision in ***Bharat Sanchar Nigham Ltd*** (Supra).

19. For all the above reasons, Ms. Chavan would urge that the Appeal of the Appellant against the Impugned Order of the Tribunal be dismissed.

Analysis :-

20. We have heard the submissions of the learned counsel for the parties and, with their assistance, have carefully perused the record.

21. To place the issue in perspective, it would be apposite to reproduce the definition of "sale" under Section 2(24) of the MVAT Act, which reads thus:—

> ***"(24) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words "sell", "buy" and "purchase", with all their grammatical variation and cognate expressions, shall be construed accordingly;***
>
> *Explanation- For the purposes of this clause, -*
>
> *(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956 (74 of 1956);*
>
> ***(b) (i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;***
>
> *(ii) the transfer of property in goods (whether as goods or in some other form)involved in the execution of a works contract including an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immoveable property;*
>
> *(iii) a delivery of goods on hire-purchase or any system of payment by instalments;*
>
> ***(iv) 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;***
>
> *(v) the supply of goods by any association or body of persons incorporated or not, to a member thereof for cash, deferred payment or other valuable consideration ;*
>
> *(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of alcoholic liquor for human consumption where such supply or service is made or given for cash, deferred payment or other valuable consideration ;*
> *shall be deemed to be a sale ;"*

22. Contextually, we have perused the contractual terms stipulated in the contracts dated 18th January 2005 and 31st July 2004 respectively. These relate to the contractual terms entered into by the Appellant with Hindustan Construction Company, which are extracted as under:-

> *(i)* ***Subject/Re***- *Hiring of 3 numbers 75 MT Cranes;*
>
> *(ii)* ***Rate*** *– At Rs.3,10,000.00 per month, round the clock for 28 days working. (Minimum 280 hours per month). Any working hours beyond 280 hours per month, shall be paid on prorata basis;*
>
> *(iii)* ***Period of Hire / Duration of Rental Period*** *– Period commencing from 01/02/2005 up to 30/04/2005 which may be extendable for further period;*
>
> *(iv)* ***Insurance*** *– Equipment shall be insured by the Appellant and the company shall not be liable for any damage to the equipment and/or property, personnel, etc;*
>
> *(v)* ***Replacement*** *– If the company finds that equipment or operator provided are not up to the mark, the company reserves the right to ask the replacement forthwith without any cost to Appellant;*

(vi) ***Mobilization and De Mobilization*** *– Mobilization and Demobilization charges to be paid by the company to the Appellant, at the end of hire period.*

Similar contractual terms are reflected in the Contract dated 31st July 2004, between the Appellant and the Era Construction (India) Ltd.

23. On a plain reading of such terms it becomes clear that the ownership and effective control of the cranes has been retained by the Appellant, at all times. The Appellant under such contractual terms never intended to part with the ownership but it was merely a license to use the cranes on hire. In such context, we may refer to the findings recorded by the Tribunal *inter alia* in paragraphs 28 and 29 of the Impugned Order. This to the effect that the contract duration is ascribed as rental period and that insurance is taken by the Appellant would not bring the subject transaction within the realm of sale and/or transfer of rights/ownership of the cranes being retained by the Appellant. The same in fact supports the case of the Appellant in as much these observations would demonstrate that the ownership in the cranes was never parted with by the Appellant. Accordingly, in absence of transfer of ownership, there can be no sale, so as to attract MVAT under the Act.

24. The Tribunal appears to have proceeded on an erroneous premise that in the instant case, MVAT Act is attracted on the footing of there being a deemed sale on account of transfer of the right to use the goods, under the MVAT Act. In our view, as is evident from the contractual terms (Supra), the transaction in the given case does not have any ingredient of sale and or deemed sale to justify imposition of MVAT. Consequently, the finding on levy of interest and penalty in the Impugned Order is found to be not tenable in law. We, therefore, do not find ourselves in agreement with Ms. Chavan who has urged that the Impugned Order of the Tribunal, would warrant no interference by this Court.

25. We may now advert to the various decisions relied on by the Tribunal as well as by the learned counsel for the parties in the paragraphs that follow:-

26. The Supreme Court in paragraph 97 of its decision in ***Bharat Sanchar Nigam Ltd.*** (supra) has categorically laid down the attributes so as to constitute transfer of right to use the goods. We find it apposite to reproduce the said para which reads thus:-

> *"**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 therefor 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 license 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****."*

27. Upon perusal of the above, it is apparent that none of the attributes, characteristics constituting right to transfer ownership / use of the goods are present, *qua* the transaction in the present case. This in as much as the legal right to use was never to the exclusion of the Appellant's ownership right over the cranes even during the period of hire. In fact, the contractual terms for hire in the given facts, would be indicative of license to use the cranes during the hire period, the ownership of which, at all material times, remained with the Appellant. For such reasons, we are not persuaded to accept that merely because temporary possession of the cranes for the period of hire under the contractual terms was with the Companies, the attributes of sale or transfer of rights/ ownership, so as to attract Section 2(24) (b) (iv) of the Act would come into play. A co-ordinate Bench of this Court in ***M/s. General Cranes*** (supra) following the principles set out in ***Bharat Sanchar Nigam Ltd.*** (supra) has taken a similar view to hold that the transaction would not entail transfer of right in the goods, which in our view, would clearly apply to the given facts.

28. We also find force in the submission of Ms. Badheka placing reliance on a decision of this Court in ***Aurobindo Highway Services*** (supra) where a coordinate Bench of this Court had dealt with an appeal under Section 27 of the MVAT Act. The issue before the Court revolved around the interpretation of Section 2(24)(b)(iv) of the MVAT Act, which provides for transfer of the right to use the goods. This Court gainfully referred to the Supreme Court decision in ***Bharat Sanchar Nigam Ltd.*** (supra) coupled with other decisions, including that of ***M/s. General Cranes*** (supra). Upon analyzing the agreement executed between the owner and the hiring company, this Court observed that, under the said agreement, the effective control of the tanker in question, always remained with the owner and was never transferred to the hiring company. This Court had observed that when the custody and effective control of the vehicle remain with the owner, it would be incorrect to contend that there was a transfer of any right in the vehicle.

29. We find that the reasoning and ratio in ***Aurobindo Highway Services*** (*supra*) would clearly apply to the given factual matrix, as in the present case also, the effective control and ownership of the cranes always remained with the owner i.e. the Appellant. The Company hiring the cranes would hire them for a fixed period as per the contractual conditions, including payment of hiring charges, by the Companies to the Appellant, which cannot be construed as transfer of right of use/ownership in the cranes, as such right, always remained with the Appellant.

30. We have also carefully perused the decision of a coordinate Bench of this Court in ***Sanghavi Movers Limited*** (Supra). This was also a case of an appeal under Section 27 of the MVAT Act, where this Court was considering the issue of transfer of the right to use the goods under Section 2(24)(b)(iv) of the MVAT Act. We find that this Court has relied on several decisions in this regard, which have been duly noted in the said judgment, including that of ***General Cranes and Aurobindo Highway Services*** (supra). Upon analyzing the contract in that case, the Court held that the work order/contract would clearly indicate that the effective control of the cranes was never parted with. In view thereof, the question of law formulated in that case, was answered in the affirmative by holding that the transaction would not amount to a sale under Section 2(24) of the MVAT Act. Confronted with a similar situation in the given case, we have no hesitation to follow the said decision and the view taken therein.

31. We have duly considered the recent decision of the Supreme Court in ***K.P. Mozika*** (supra). The Supreme Court therein as noted in paragraph 22, *inter alia* was confronted with a similar issue of hiring of cranes. Relying upon the decision in ***Bharat Sanchar Nigam Ltd.*** (supra), it was observed that there exists a distinction between transferring the right to use and merely a license to use the goods. Reference was made to Section 65(105)(zzzzj) of the Finance Act effective from 16th May 2008, providing for taxable service.

32. In the facts that are before us, we find that the substantive/ effective control of the cranes always remained with the Appellant. Accordingly, as held by the Supreme Court in ***K.P. Mozika*** (supra) whenever there is effective/substantive control, which remains with the person who supplies/provides the goods, the transaction will be that of rendering service within the ambit of Section

65(105)(zzzzj) of the Finance Act, after its coming into force. The law as settled in ***K.P Mozika*** (Supra) would, in our view, clearly apply in the given facts and circumstances. In view thereof, the subject transaction, can at best be regarded as service rendered by the Appellant but not a transfer of the goods attracting MVAT under Section 2(24)(b)(iv) of the MVAT Act.

33. We appreciate the effective assistance rendered by Ms. Chavan in espousing the case of the Respondents. However, considering the clear legal position, as aforementioned, we are unable to agree with her contentions that the transaction would attract MVAT under Section 2(24)(b)(iv) of the MVAT Act. Adopting such a course, in our view, would tantamount to straying away from the principles laid down in the judicial pronouncements noted above, more particularly that of the Supreme Court, which decision would be binding on this Court.

34. Considering the submission of Ms. Badheka with regard to fueling of the cranes by the Companies, we have noted the circumstances in which the same had been done, which factually remains uncontroverted. In view thereof, even on this count the transaction cannot assume the character of sale and or deemed sale by way of transfer of right to use/own the cranes. Such right is, at all times, retained by the Appellant. Therefore, such distinction as sought to be drawn by Ms. Chavan would not take the case of the Respondent (Revenue) any further.

35. For all the above reasons, the Appeal is allowed. Consequently, the Impugned Order of the Tribunal dated 11th July 2023 is quashed and set aside.

36. The Appeal is Disposed Of in the above terms. No order as to costs.

37. All concerned to act on an authenticated copy of this Judgment.

(ADVAIT M. SETHNA, J.) **(SUMAN SHYAM, J.)**