

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 40364 of 2017

(Arising out of Order in Appeal No. 239/2016 (STA – II) dated 28.11.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

M/s. Chennai Citi Centre Holdings (P) Ltd. **Appellant**
No. 10 – 11, Dr. Radhakrishnan Salai
Mylapore, Chennai – 600 004.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Ms. N. Asmitha, Advocate for the Appellant
Smt. G. Kripa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41331/2025

Date of Hearing: 10.11.2025
Date of Decision: 14.11.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 239/2016 (STA – II) dated 28.11.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant had leased out their parking area / lot to M/s. Smart Parking India Pvt. Ltd. (**SPIPL**) for parking of public vehicles in the basement of their shopping malls and in an additional parking area for which the appellant received 78% car park revenue collected by SPIPL. It was noticed that the appellant had not paid service tax on the money received even though the same

allegedly attracted service tax. It was the department's contention that Notification No. 25/2012-ST providing exemption to services by way of vehicles parking to general public excluded 'leasing of space for an entity for providing parking facility' from the exemption. Hence Show Cause Notice dated 22.7.2014 was issued for demanding service tax of Rs.20,67,463/- for the period from July 2012 to March 2013 i.e. after the negative list came into effect from 01.07.2012. After due process of law, the Ld. Adjudicating Authority confirmed the demand of service tax along with appropriate interest and imposed penalty under sec. 76 of the Act. In appeal, the Ld. Commissioner (Appeals) upheld the same. Hence this appeal.

3. The learned Advocate Ms. N. Asmitha appeared for the appellant and Ld. Authorized Representative Smt. G. Kripa appeared for the respondent.

3.1 The Ld. Counsel submitted that the appellant, is the owner of a shopping mall situated at Dr. Radhakrishnan Salai, popularly known as 'Chennai CitiCentre'. In order to provide parking facilities to the customers visiting the mall, necessary arrangements were made at Basement 1 and Basement 2 of the mall. Additionally, a vacant plot situated adjacent to the mall was also used to provide car parking facilities. In order to operate and maintain the parking infrastructure, the appellant had entered into a 'Car Park Agreement' dated 15.03.2010 with SPIPL which is primarily in the nature of an agreement for operation and management of the parking space. The Ld. Counsel stated that subsequent to the introduction of Exemption Notification

No. 25/2012-ST dated 20.06.2012, services by way of vehicle parking to general public came to be exempted as below:

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility,

Since the parking space is not rented/leased out to SPIPL the exemption provided under S.No. 24 would be available to them. She further stated that the Agreement makes it abundantly clear that the amounts paid by the visitors for availing the parking facility, is deposited directly into the bank account of the Appellant and only thereafter amounts are remitted to SPIPL, as per the agreed ratio. This also indicated that only the appellant has provided the service to their customers and SPIPL is only engaged to maintain the facility and its functioning. The Ld. Counsel further stated that the order passed by the Commissioner Appeals in OIA No. 154-156/2014 (MST) dated 14.03.2014 for previous periods while dropping the demands held as below:

"9.1 From the above terms and conditions of the Agreement, it is evident on record that M/s Smart had been allowed by the Appellant only to operate the car parking are on behalf of the Appellant. **It is an Agreement for Operation and Maintenance for and on behalf of the Appellant and not an agreement for renting out/leasing out.** Also from the Agreement it was seen that M/s Smart shall collect the parking charges from the visitors on behalf of the Appellant and remit the same to the Bank Account of the Appellant. Hence it was the Appellant who allows the visitors to park their vehicles and the parking charges are collected by the Appellant from the visitors, through M/s Smart." (emphasis added)

The Ld. Commissioner went on to hold that the appellant was not liable to pay service tax on the parking charges collected and hence the demand confirmed against the appellant was not sustainable. No

appeal has been preferred by the respondent against the said order and hence the matter has attained finality. The Ld. Counsel hence prayed that the appeal may be allowed.

3.2 The Ld. AR Smt. G. Kripa reiterated the findings in the impugned order.

4. We have perused the appeals and heard the rival parties. We find that in the light of the order of the Commissioner (Appeals) in OIA No. 154-156/2014 (MST) dated 14.03.2013 not having been challenged, by either of the parties, it has become final. However, the impugned OIA 239/2016(STA-III), dated: 28.11.2016 passed subsequently and involving identical facts, has after considering the OIA dated 14.03.2013 taken a diametrically opposite stand in a very cryptic and facile order and held that SPIPL paid money to the appellant in order to use the impugned parking lot/ area for providing parking facility. Hence the impugned activity is nothing but leasing of space for providing parking facility, which is specifically excluded as per notification 25/2012-ST and is liable to Service Tax.

5. We find that it has been well accepted that as per judicial comity or judicial discipline a decision of the earlier Commissioner (Appeals) on identical facts should be followed subsequently by the same Authority, unless it is shown that the earlier order has been modified or set aside in appeal, which is not the case here. This would help promote certainty and consistency in quasi-judicial decisions and provide assurance to the trade and public on the uniform application of law. The Hon'ble Supreme Court in its recent judgment in **ROHAN VIJAY NAHAR & ORS. Vs THE STATE OF MAHARASHTRA & ORS.**

[2025 INSC 1296/ CIVIL APPEAL No. 5454 OF 2019, Dated: 07.11.2025], held that when a judgment minimizes a binding ratio, ignores missing statutory steps, and **seeks to distinguish on immaterial facts, it creates an appearance of a reluctance to accept precedent**. Such an approach conveys a measure of pettiness that is inconsistent with the detachment that judicial reasoning demands. The Hon'ble Court held that this is an unfortunate departure from the discipline of stare decisis. We hence do not appreciate the stand taken by the Ld. Commissioner Appeals vide the impugned order.

6. On merits we proceed to examine the Agreement. The relevant clauses of the 'Car Parking Agreement' between the appellant and SPIPL states as under:

Article 1

Expertise of SPIPL

SPIPL has the expertise, experience, knowledge and technical know how in the operation of car parks.

Consideration

For the considerations herein stipulated, the Owner is desirous of permitting SPIPL to use the premises in order to engage the services of SPIPL to operate and run the premises as a car park upon the terms and conditions hereinafter contained.

Article III

Operation of premises.

The Owner hereby agrees to permit and SPIPL hereby agrees to operate the premises with the right to operate the premises as a car park, during the term hereby created for the purposes connected thereto

Sharing consideration/ Monthly car park Revenue

In consideration of the Owner allowing the premises to SPIPL, SPIPL shall share the monthly car park revenue after adjusting the direct operating expenses with the Owner in the following proportions.

Owner-78%

SPIPL-22% or Rs. 2.70 lacs, whichever is higher

(a) The entire collections would be deposited to the Bank Account maintained by CCCHPL and in turn CCCHPL remit the share pertaining to SPIPL

7. The Hon'ble Supreme Court in **Great Eastern Shipping Company Ltd. Vs State Of Karnataka** [2020 (32) G.S.T.L. 3 (S.C.)]

has stated the principles for interpreting contracts. It held;

Interpretation of contract

13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

(emphasis added)

8. We find that the appellant has engaged SPIPL because of its expertise, experience, knowledge and technical know-how in the operation of car parks. In consideration of the appellant engaging the services of SPIPL, they (SPIPL) are required to share the monthly car park revenue after adjusting the direct operating expenses with the appellant. The entire amount collected is first deposited in the bank account maintained by the appellant after which the share pertaining to SPIPL is remitted to them. The amount received is hence in the nature of sharing of profits, which can vary from month to month and

cannot be considered as rent. The ultimate purpose of the Agreement as seen from the joint intent of the parties is for the appellant to engage SPIPL in providing car parking facility to the public on a profit-sharing basis. This cannot be considered as leasing of space to an entity for providing parking facility. The impugned order hence merits to be set aside.

9. In the light of the discussions, we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief, as per law. The appeal is disposed of as above.

(Order pronounced in open court on 14.11.2025)

sd/-
(AJAYAN T.V.)
Member (Judicial)

sd/-
(M. AJIT KUMAR)
Member (Technical)

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