

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax ORS Application No.10452 of 2019

(by appellant)

Service Tax Appeal No.160 of 2010

(Arising out of OIO No.7/COMMR./2010 dated 27.01.2010 passed by Commissioner of
Central Excise, Ahmedabad-III)

Messrs John Energy Ltd.

220, G.I.D.C. Estate, Mehsana-384002

.....Appellant

VERSUS

Commr. Of Central Excise-Ahmedabad-III

2nd Floor, Custom House, Near All India Radio,
Navrangpura, Ahmedabad-380009.

.....Respondent

APPEARANCE:

Shri. Amal Dave, Advocate for the Appellant

Shri P.K. Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 12468 /2021

DATE OF HEARING: 30.09.2021

DATE OF DECISION: 28.10.2021

RAJU

This appeal has been filed by M/s John Energy Limited against demand of service tax, interest and imposition of penalty.

2 Learned Counsel pointed out that demand has been raised under the head of

- i) Survey and Exploration of Mineral Oil and Gas Service,
- ii) Business Auxiliary Service
- iii) Manpower Recruitment and Supply Services.

2.1 The appellant are registered with Service Tax w.e.f. 01.06.2007 and were discharging service tax under the head of 'Mining of Mineral, Oil or Gas Service'. The said service was introduced on 01.06.2007. The services provided by the appellant is sought to be taxed under the category of 'Survey and Exploration of Mineral Oil and Gas Service' for the period prior to 01.06.2007. Learned Counsel argued that since the service provided by them is covered by the head of 'Mining of Mineral Oil and Gas

Service', it cannot be covered under the 'Survey and Exploration of Mineral Oil and Gas Service' for the period prior to 01.06.2007. He relied on the following case laws:

- Zee Telefilms Ltd. 2006 (4) STR 349
- Kanak Khaniz Udyog 2017 (52) STR 46 (Tri. Del.)
- Needwise Advertising Pvt. Ltd. 2011 (21) STR 229
- Hero Motorcorp Ltd. 2016 (42) STR 702

2.3 Learned Counsel pointed out that their activity cannot be called Survey and Exploration by any stretch of imagination. He pointed out that their service was used for extracting and transporting minerals after the completion of the activity of Survey and Exploration. He argued that Survey and Exploration is a precursor of the activity of mining. Their activities are not the activities involving Survey and Exploration for this purpose he took us through the scope of work in a few of their contracts. In their contract with Reliance Industries Limited, the scope of work was as follows:

1.0 Objective / Scope

The scope of work for the Contractor is to provide at the well Site one (1) Air Drilling Rig and Equipment as per Exhibit B for drilling twelve (12) wells in accordance with the well program decided by RIL. Ten (10) wells will be drilled in two 5-Spot clusters, one each in Sohagpur East (SPE) and, Sonhat (SHN) CBM blocks. Remaining two (2) wells will be drilled in Sohagpur West (SPW) Block to expand existing 5-Spot cluster. The Rig will move to Sonhat to drill the 5-spot and then to Sohagpur West Block. However, this program can be changed at the discretion of RIL in accordance with the well program decided by RIL. The Air Drilling Rig and all Equipment shall conform to the technical specifications detailed in Exhibit – B. Rig shall be capable of drilling 7 7/8" hole in Sohagpur East & Sonhat Blocks and 8½" hole in Sohagpur West block upto 1000 meters depth. Contractor shall be responsible for the entire execution of drilling and related activities. The details pertaining to the tentative well design may vary during the duration of the Contract. The Contractor shall execute well programme within the designated capacity of the Drilling Rig, Equipment and all other drilling tools.

In another contract with GSPC, the work was defined as follows:

“1.38 “Work” shall mean the Work provided by Contractor which includes providing and operating the Drilling Rig along with auxiliary equipment, spares, consumables, supplying the necessary equipment, materials, personnel and equipment, materials, personnel and technical support etc. necessary for the performance of drilling Services on the Work Site / Work Location and more particularly described in Exhibit “H”.”

In another contract with Hydrocarbon Resource Development Co. (P) Ltd., the scope of work was providing specified machinery and drilling machinery on daily charge basis.

1 Work over / well servicing unit

“IDECO” USA Make, Model Rambler, namely JOHN-80 Rig
Self propelled, back in type
Static Hook Load capacity – 215,000 lbs
The rig is capable to drill/ service 2,200 mts with 2-7/8” x 10.4 ppf nominal weight drill pipes.

2 Draw Works

Horse Power – Input HP rating 430 HP
High and low transmission clutch,
5 forward and 1 reverse speed transmission
Drill line diameter – 1”,
The main drum brake having direct acting, maximum wrap around feature energizing type brake
Single line pull is 16,500 kg. (6 lines).

2.4 Learned counsel relied on the decision of the Tribunal in the case of Atwood Oceanics Pacific Ltd. **2013 (32) STR 756**, Dalma Energy LLC **2014 (35) STR 412**, and on the decision of Tribunal in the case of Kanak KhanijUdhyog**2017 (52) STR 46**.

2.5 Learned Counsel pointed out that the second issue raised in the Show Cause Notice related to the demand of service tax on the service of boosting and compressing the natural gas for ONGC for its use. The appellant provided the required equipment, skilled workers and supervised the activity on day-to-day basis. Learned counsel pointed out that the activity done by them is not provision of any service. He argued that the compression of gas is “Manufacture” as per Note-5 of Chapter 27 of Central Excise Tariff. Since the activity amounts to manufacture it goes out of the purview of the Business Auxiliary Service. The said compressed

gas was ultimately used by RIL as fuel and by Amul Dairy for Milk Processing.

2.6 Learned Counsel further pointed out that demand under the head of Business Auxiliary Service has also been raised on the income earned as “Associated Commission”. He argued that the Revenue has not shown nor established that such commission was recovered in relation to provision of any service on behalf of clients. He argued that the activities like arranging logistics, liaising with various agencies and the like (for which such commission was paid by clients) was not covered under definition of ‘Business Auxiliary Service’.

2.7 Demand was also raised under the head of Manpower recruitment and supply agency service. Learned Counsel argued that Revenue has not shown nor established that appellant had supplied any outside manpower to client M/s Cairn Energy and M/s Joshi Technologies. He pointed out that Revenue had accepted that appellant had engaged their own employees for carrying out certain activities for these clients in respect of mining operations. He argued that in view of above, the demand is incorrect.

2.8 Learned Counsel further pointed out that all these actions taken by the appellant were under the bonafide belief and without any mens rea. In view of that the invocation of extended period of limitation is not correct and therefore, benefit of limitation should also be extended to the appellant.

3. Learned Departmental Representative relies on the impugned order. He pointed out that the decision of Tribunal in case of John Energy was challenged by Revenue before the Hon’ble Apex Court. He pointed out that Hon’ble Apex Court has admitted the appeal as reported in 2014 (34) STR J172. The said appeal is still pending before the Apex Court.

4. We have gone through rival submissions. We find that the order confirms the following set of demands:

- i) Demand under the head of Survey and Exploration of Mineral Oil and Gas Service.
- ii) Demand under the head of Business Auxiliary Service on the activity of gas compression carried out by the appellant for their clients.
- iii) The demand under the head of Business Auxiliary Service in respect of associated commission received by the appellant.
- iv) The demand under manpower recruitment and supply service.

5. In respect of first issue, the appellant has argued that the activity undertaken by them does not fall under 'Survey and Exploration of Mineral Oil and Gas Service' but falls under the mining activity. The appellant were not engaged in any activity which involve Survey and Exploration. It has been argued by the appellant that their activities started after the Survey and Exploration was completed. Learned Counsel has taken us through the scope of work in three of the contracts. All three contracts require the appellant to simply bring the equipment and done drilling work at the locations identified by the client. In this regard the appellant's observation made in the Tribunal order in case of Atwood Oceanics Pacific Ltd. (supra) are relevant:

"11.1 Issue (i) - Revenue's appeal claiming classification of the services under "Survey and Exploration of Mineral, Oil and Gas Service".

According to definition, Survey and exploration of Mineral, Oil and Gas means - Geological, Geophysical other prospecting, surface or sub-surface surveying or map making service in relation to location or exploration of deposits of Mineral, Oil or Gas'.

11.2 M/s. Atwood has claimed that they have not undertaken any Geological, Geophysical or other prospecting, surface or sub-surface surveying or map making service and therefore, the services provided by them which is limited to drilling, testing, completion of exploratory wells as specified by the Company i.e. GSPC, cannot be classified under this service.

11.3 Revenue has relied upon the preamble portion of the contract between GSPC and M/s. Atwood which starts with the words - "Company desires to drill, test, complete exploratory wells, as specified by the Company in the east coast offshore of Andhra Pradesh, India as set for hereinafter." This would show that the contract was for drilling, testing and completion of exploratory wells. Further it was also submitted that the clarification issued by the Board in Letter F. No. B-2/8/2004-TRU, dated 10-9-2004, explained the service at the time of introduction in 2004 as "Service rendered in relation to survey and exploration only and not on the activity of actual extraction." Further, the letter also observed that activities such as seismic survey, collection/process/interpretation of data and drilling and testing in relation to survey and exploration would, however, fall within the ambit of taxable service. It was submitted that this was the

intention of the Government and therefore this clarification has to be treated as *contemporaneaexposito* and therefore, keeping in view the preamble of the contract and the observation of the Ministry in the letter, it becomes quite clear that the action of the M/s. Atwood in providing the service of drilling, testing of exploratory wells is classifiable under this service. Since M/s. Atwood has been entrusted to drill, test and complete exploratory well, the service provided is covered by the definition. Further, Revenue has also relied upon the definition of exploratory wells given in certain websites. Revenue has also relied upon the statement of Shri Vishal D. Rathore, Drilling Engineer of GSPC, who agreed that commercial production not yet started. Several decisions as well as references of the Ministry were cited to submit that subsequent to introduction of mining service and SOTG service would not take the service provided by the M/s. Atwood out of purview of the service of “Survey and Exploration of Mineral, Oil and Gas Service” prior to 1-6-2007.

12. We are unable to accept the submissions made on behalf of Revenue. Subsequent clarification issued by the Ministry and reproduced in Para 8.6 above, in our opinion goes against the Revenue’s contention. Ministry has issued a letter on 28-2-2007 clarifying the scope of Mining of Mineral, Oil or Gas Service. While doing so, it was observed that, presently geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas are leviable to service tax under - “Survey and Exploration of Mineral Service”. The letter goes on to observe that site formation, clearance and excavation and earth moving, drilling wells for production/exploration of Hydrocarbon (developmental drilling) provided for mining are individually classified under appropriate taxable service. The letter goes on to say that services provided in relation to mining of mineral, oil and gas are comprehensively covered under this proposed service. With this, services provided in relation to both, exploration and exploitation of mineral, oil or gas will be comprehensively brought under the service tax net. The fact that drilling of wells for production/exploitation Hydrocarbons (developmental drilling) is put along with site formation and clearance and excavation and earth moving, which are not part of Survey and exploration of mineral service, would show that the *contemporaneaexposito* and intention of the Government that can be derived from the letter in 2004, does not appear to be correct in our view.

12.1 According to Wikipedia, there are five elements of a petroleum prospects :

“A prospect is a potential trap which geologists believe may contain hydrocarbons. A significant amount of geological, structural and seismic investigation must first be completed to redefine the potential hydrocarbon drill location from a lead to a prospect. Five geological factors have to be present for a prospect to work and if any of them fail neither oil nor gas will be present.

- **A source rock** - When organic-rich rock such as oil shale or coal is subjected to high pressure and temperature over an extended period of time, hydrocarbons form.
- **Migration** - The hydrocarbons are expelled from source rock by three density-related mechanisms : the newly-matured hydrocarbons are less dense than their precursors, which causes overpressure; the hydrocarbons are lighter medium, and so migrate upwards due to buoyancy, and the fluids expand as further burial causes increased heating. Most hydrocarbons migrate to the surface as oil seeps, but some will get trapped.

- **Trap** - The hydrocarbons are buoyant and have to be trapped within a structural (e.g. Anticline, fault block) or stratigraphic trap.
- **Seal or cap rock** - The hydrocarbon trap has to be covered by an impermeable rock known as a seal or cap-rock in order to prevent hydrocarbons escaping to the surface.
- **Reservoir** - The hydrocarbon are contained in a reservoir rock. This is a porous sandstone or limestone. The oil collects in the pores within the rock. The reservoir must also be permeable so that the hydrocarbons will flow to surface during production.”

These are the five elements which are required to be complied with to identify source of potential petroleum Hydrocarbon drill location. In our opinion, this is what is covered by the definition of Survey and Exploration as far as oil/gas is concerned.

12.2 Further, it is settled law that object and content of the contracts cannot be determined and decided by looking at one paragraph or one clause but the whole contract has to be seen as a whole and considered.

12.3 The next question arises what is the drilling and testing covered by the letter issued by the Ministry issued in 2004. It is well known that in a Geological survey, drilling is done to confirm the other theoretical calculations. In the case of Oil, as mentioned in Wikipedia, offshore drilling refers to a mechanical process and. it is typically carried out in order to explore for and subsequently produce hydrocarbons which lie in rock formations beneath the seabed. Therefore, the wells drilled as per the GSPC’s specification in the location identified after ensuring that the five elements of prospect are existing in the activity subsequent to survey and cannot be said to be a part of the service which is preliminary to mining or drilling activity.

12.4 No doubt, the analysis made by us can be questioned and we are aware of limitations since we are not experts in the field of oil exploration, drilling or survey etc. but the analysis made above with the help of Wikipedia, letters issued by the Ministry and definitions of service would show that it is possible to entertain an opinion that the activity of the M/s. Atwood cannot be considered as a service covered by the definition of service ‘Exploration of Mineral, Oil and Gas Service’. It is also settled law that if two views are possible and if an assessee entertains a belief that he is not liable to pay duty or tax, intention to evade duty, suppression/mis-declaration cannot be attributed and therefore, extended period of limitation for demanding duty/tax cannot be invoked. Therefore, even if our finding on classification aspect turns out to be incorrect, extended period of limitation could not have been invoked. In this case, the period is prior to 1-6-2007 and the show cause notice was issued in April 2009. Therefore, the demand for service tax treating the services provided as service of Survey/Exploration of Minerals cannot be sustained.”

6. Revenue has challenged this decision of Tribunal in the Hon’ble Apex Court and appeal has been admitted. We find that on the merits of the issue regarding the classification of the drilling activity the decision in the case of Atwood Oceanics Pacific Ltd. (supra) is not very conclusive. The decision itself raises doubts about itself. The appeal against the said order has also been submitted by Hon’ble Apex Court. In these circumstances,

we find that the exact nature of the activity undertaken by the appellant in each contract needs to be examined to ascertain whether it would fall under the category of mining service. It is seen from the Show Cause Notice that it examines in detail the activities undertaken contract wise. However, the impugned order does not examine the activities undertaken contract-wise to ascertain the exact nature of service provided in each contract. It can be seen from the above that the language in the contract for the nature of service being provided is quite different in each contract, and therefore, all the contracts cannot be dealt summarily in identical manner. In view of above, we set aside the said demand and remand the issue back to Commissioner to decide the matter after examining each contract.

7. Learned counsel for the appellant has asserted that the activity of compressing gas amounts to manufacture in terms of Note-5 of Chapter 27 of Central Excise Tariff. It has been argued that since the activity of compressing gas amounts to manufacture and it is clearly excluded from the ambit of Business Auxiliary Service.

8. Learned Authorized Representative argued that the appellant had installed compressor station in order to facilitate boosting of natural gas for ONGC. He pointed out that Shri V G Vyas Manager Operation (Compression) of the appellant in his statement dated 14.02.2008 stated that ONGC was having many oil wells at different locations and they are connected to gas gathering stations (GGs). From the GGS the pipeline of gas was connected for compression and it has been supplied to ONGC at different destinations by providing required boosting. A perusal of the contract with ONGC shows that appellant required to provide three compressors of 40,000 SCMD each to be deployed at specific locations. The said compressors packages of 40,000 SCMD were required to inlet Pressure (At B/L) of 0.5 – 1.5 Kg/cm² to outlet pressure (At B/L); 35 kg/cm² of gas. From the contract it is apparent that the job of the

appellant was to compress approximately 80,000 SM3 gas per day from 0.5 – 1.5 kg/cm² to 35 kg/cm² and supply the same to back to ONGC.

Chapter Note 5 of Chapter 27 reads as follows:

“5. In relation to natural gas falling under heading 2711, the process of compression of natural gas (even if it does not involve liquefaction), for the purpose of marketing it as Compressor Natural Gas (CNG), for use as a fuel or for any other purpose, shall amount to ‘manufacture’.”

9. From the said chapter Note, it is apparent that only if the natural gas is compressed for the purpose of marketing it as compressed gas, the activity would amount to manufacture. In the instant case, from the statement of Shri P. Khetan, Deputy General Manager (Production) of M/s ONGC, the impugned order records that Shri Khetan in his statement stated as follows:

“The reservoir pressure generally decreases during production of oil and gas and when the pressure decreases considerably the oil is not able to reach surface due to insufficient reservoir pressure. Under such circumstances high pressure gas is injected into the well to lift the oil from the well and in order to collect produced oil and gas from nearby wells. Group Gathering Station is (GGS) constructed. In GGS all the oil and gas received from the wells is separated and oil is sent to Central Tank Farm (CTF). The produced gas is compressed with the help of Compressor installed by the said assessee, and the compressed gas is sent to the well wherever required to lift the oil.”

10. However, from the appeal memorandum it is seen that the appellant has claimed that the compressed gas was ultimately used to generate electricity by Reliance Industries Ltd. and also for processing of milk by Amul Dairy. From the above, it is apparent that there is clear contradiction between the fact recorded in the impugned order and fact claimed by the appellant in appeal memorandum. The Note 5 of Chapter 27 clearly qualifies that compression of gas would qualify as manufacture if it is meant for the purpose of marketing of gas. As per appellant's claim that the compressed gas was supplied to RIL and M/s Amul, it would amount to marketing however if the gas was used as per statement of Shri Khaitan for lifting oil from well, it would not amount to marketing. In

view of this discrepancy between impugned order and the claim made by the appellant, the demand is set aside and matter in so far as it relates to this issue is remanded back to Commissioner for fresh adjudication after ascertaining the facts.

11. The next head of demand relates to associated commission received from various clients. The appellant had raised the invoices of M/s ONGC Cracow Ltd. on monthly basis against the operation of IR-750 Rings and the income was accounted as oil filed income. The appellant had vide their letter dated 08.05.2008 clarified that they were providing all local assistance like arranging logistics, liaisoning with various agencies, helping local contract etc. on a fee basis which was termed as commission. The appellant have claimed that the services are not covered under Business Auxiliary Service as there is no sale or marketing of goods involves in their activities. The said argument has been rejected by Commissioner on the ground that the Business Auxiliary Service not only covered service in relation to marketing or sale of goods but also includes their services including supervision of services on behalf of the client. It is seen that the impugned order does not elaborate as to how the activity done by the appellant amount to providing service on behalf of the client. From the description of services given by Shri Deepak Joshi, Director of the appellant, it is apparent that the services were not given on behalf of the ONGC but given to ONGC. In these circumstances, there is no merit in the argument of the Commissioner in the impugned order. In view of the above, we do not find any merit in the demand raised under this head and the same is set aside.

12. The next issue relates to service tax under the head of 'Manpower Recruitment and Supply Service'. It was alleged in the notice that the appellant had supplied welders and other individuals to M/s Cairn Energy and other clients at temporary basis under respective contracts and raised the monthly invoices in terms of the respective contracts. Shri Deepak

Joshi, the Director, vide his statement dated 02.05.2008 had stated that whatever was dispatched in the invoices has also appearing in the scope of work under the respective contract/ agreement has been carried out by the assessee. Under this head, the demand of Rs. 23,000/- has been raised. The Show Cause Notice does not elaborate exactly how the personnel were deputed for the job. The appellant have asserted that the personnel were deployed for their own work and as per contract. Under these circumstances when the personnel were deployed by the appellant to undertake the jobs involved in the main contracts it cannot be termed as 'Man Power Recruitment and Supply Service', the demand on this count is set aside.

13 Consequently appeal is partly allowed in above terms. In respect of the issue (i) and (ii) of para 4 above the demand is set aside and matter remanded to adjudicating authority for fresh order in above terms.

(Pronounced in the open court on 28.10.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha