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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 16/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70490/2017-CU[DB] dated 18/04/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/633/2009	JUBILANT OIL AND GAS PVT. LTD. PLOT NO 1-A, SECTOR 16-A INSTITUTIONAL AREA, NOIDA-201301 (U.P)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA MARG
ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/633/2009-CU[DB]

(Arising out of Order-in-Appeal No. 13-CE/APPL/Noida/2009 dated 29/01/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II [Noida])

M/s Jubilant Oil And Gas Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Atul Gupta, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 18/04/2017

FINAL ORDER NO...70490/2017.........

Per: Anil Choudhary

The issue in this appeal by the appellant-assessee (formerly known as M/s Enpro Finance Pvt. Limited), engaged in providing services such as advising and assisting various foreign-based entities in carrying out their business operations in India is, whether under the facts and circumstances that the amount payable to the appellant by the service receiver situated outside India, but paid by the ONGC (ONGC awards contracts for Oil & Gas exploration to the principal of the Appellant), whether amounts to receipt of consideration in convertible foreign exchange, so as to qualify as export of service. The second issue regarding classification of the service which as per the appellant is "Business Auxiliary Service" and not "Management Consultancy Service" as determined by the courts below.

2. The brief facts of the case are that the nature of services rendered by the appellant to M/s Transocean INC is as per the contract, commonly known as "Consultancy Agreement" executed between M/s SEDCO Forex International Drilling INC, USA & M/s Jubilant Oil & Gas Pvt. Ltd. (JOGPL, for short) dated 01/06/2000; that contract is master contract, which governs the services rendered by appellant to M/s Transocean INC, and as such the scope of services to be performed and compensation thereof, with respect to all other concerns (sister concerns of above) is also on the same lines as that of master contract. However, a separate contract is executed between the appellant & the relevant entity of M/s Transocean INC at the time every bid is submitted. M/s Transocean INC is located in USA and not located in India. This company is awarded contract for oil and gas exploration by ONGC. In terms of the said agreement, the appellant is bound to advise the concerned entity of M/s Transocean INC on various matters like: –

(i) On commercial aspects of preparation of bids and subsequent contract negotiations.

(ii) Regarding current developments in the territory of India, including that pertaining to economic and political developments which influence the business and operations of the Transocean Group.

(iii) Regarding securing various government licences/permits, including that relating to Visas and Labour permits to their personnel, with respect to the business and operations.

(iv) On the importation into an exportation out of India of all vessels, equipment, materials, etc. in connection with their operations in India.

(v) Concerning any commercial problems or issues that may arise in connection with their work in India and efforts to resolve the same favourably.

(vi) On purchase in India of equipment, supplies, services, repairs, etc., which may be required in connection with any work in India.

(vii) On matter relating Government relations, rulings, taxation and legal matters and accounting practices in connection with their operations in India.

(viii) On matters of housing, office facilities and hiring of local personnel for their work.

(ix) On any improper use of companies name, patents or proprietary rights in India by any person.

(x) On various laws and regulations prevalent in India concerned with their operations.

It is revealed from the aforesaid master contract that besides the aforesaid responsibilities of advisory nature, M/s JOGPL is also bound to provide assistance to M/s Transocean INC. On various enquiries conducted by Revenue, regarding taxability, the appellants took a categorical stand that they have got contract with the service receiver located outside India and they are getting their remuneration from the said service receiver, through ONGC and accordingly the said received/consideration amounts to receipt in convertible foreign exchange. Thereby thus satisfy the two conditions under the Export of service rules and as such they are not liable to pay Service Tax under the Finance Act. However, Revenue did not agree with the contention and accordingly Show Cause Notice dated 22/06/2006 was issued demanding Service Tax for the period February, 2004 to August, 2005.

3. The Show Cause Notice was adjudicated on contest vide Order-in-Original dated 31/10/2007, the Additional Commissioner was pleased to confirm the proposed demand of Rs.32,46,440/- with interest and further penalty was imposed of Rs.150/- per day under Section 76 of the said Act,

Rs.4,000/- penalty under Section 77 & Rs.60 Lacs penalty under Section 78 of the Act.

4. Feeling aggrieved the appellant preferred appeal before ld. Commissioner (Appeals), who was pleased to dismiss the appeal, upholding the Order-in-Original.

5. The ld. Counsel for the appellant states that the issue is no longer *res-integra* and the same has been decided in their favour by Coordinate Bench of this Tribunal in the case of National Engineering Industries Ltd. *Versus* Commissioner of Central Excise, being Final Order No. ST/A/53813/2015-CU(DB) dated 06/11/2015 reported at 2016 (42) S.T.R. 537 (Tri. – Delhi). In the said judgment this Tribunal have followed the judgment of Hon'ble Supreme Court in the case of J. B. Boda reported at 1997 (223) I.T.R. 271 (SC) and also followed the ruling of this Tribunal in Paul Merchants Ltd. *Versus* Commissioner 2013 (29) S.T.R. 257 (Tribunal). The ld. counsel further pointed out from the findings recorded by the Additional Commissioner, wherein at one place, it is mentioned that the contracts between ONGC and the foreign contractors recognized M/s JOGPL as their Indian Agent. Further, the contract stipulated direct payment of commission by ONGC to M/s JOGPL out of the amount payable to the foreign contractors. Again in subsequent part of the order, the ld. Additional Commissioner observed that the Hon'ble Supreme Court's decision in the case of J. B. Boda & Company (supra) does not support the case of the

appellant in view of the fact that, in the instant case, no amount was payable by M/s JOGPL – appellant to the foreign contractors in convertible foreign exchange, whereas in the cited case, payment was made to the foreign contractors, in the convertible foreign exchange. Therefore, unlike in the cited case no question of retention of any portion of such payment by M/s JOGPL arise in this case. Further, referring to the facts of Indian Hume Pipe Co. Ltd., case, it is observed that in the said case there was verbal agreement between the petitioner which provided technical consultancy to foreign organization and the Indian organization was actually required to provide consultancy to the foreign organization. On the contrary, in the instant case, no such verbal or written agreement existed between M/s JOGPL & ONGC. Therefore, the ratio of the said decision does not support the case of M/s JOGPL.

6. The ld. counsel further points out that under similar facts and circumstances, in their own case, the very same Bench (of Justice G. Raghuram, President & Shri R. K. Singh, Member [Technical]). Vide Final Order Nos. ST/A/54492-54493/2014 dated 24/11/2014 reported at 2015 (38) S.T.R. 625 (Tri. – Delhi) have decided against the appellant, distinguishing the judgment of Hon'lbe Supreme Court in the case of J. B. Boda & Company (supra). Thus, by implication the same Bench of this Tribunal have overruled their earlier judgment in the appellant's case, which was rendered on

24/11/2014, by its subsequent judgment dated 06/11/2015 in the case of National Engineering Industries Ltd. (supra). Further, referring to the ruling of National Engineering Industries Ltd. where the contention was that the commission was received directly from Indian buyers, it was held, still in effect commission was received from foreign supplier because the Indian buyer directly paid commission to National Engineering Industries Ltd. on behalf of the foreign supplier instead of first sending the commission amount to foreign supplier who would have then sent it to National Engineering Industries Ltd. Under similar facts and circumstances, this Tribunal have held as follows: –

> "We have considered the contentions of both sides. In case of the commission received from foreign supplier for procuring orders from the Indian buyers to whom the goods were directly supplied by the foreign supplier, the service rendered clearly satisfies the requirement of the same being the export of service as has been held by CESTAT in the case of *Paul Merchants* (supra). Even in the other situation where the commission is paid by the Indian buyers to the appellant as per arrangement with the foreign supplier instead of the commission along with price being first remitted to the foreign supplier and then the foreign supplier sending the commission to the appellant, in effect, the commission was paid to the appellant on behalf of the foreign supplier only and can

be deemed to have been paid in foreign exchange as the buyers would have had to remit the commission part also to the foreign supplier who would have in turn sent it to the appellant. This arrangement thus makes the procedure simpler without any material difference with regard to foreign exchange implication to India. We find that in the case of *J. B. Boda* – 1997 (223) ITR271 (SC) the Supreme Court has deemed such payments to be in foreign exchange. Thus we find that the issue is covered in the appellant's favour by the judgment of CESTAT in the case of *Paul Merchants* (supra) read with judgment of the Supreme Court in the case of *J. B. Boda* – 1997 (223) ITR271 (SC). Accordingly, we do not find the impugned order to be sustainable. The appeal is allowed."

Accordingly, the ld. counsel prays for allowing the appeal with consequential benefits.

7. The ld. A. R. for Revenue relies on the impugned order.

8. Having considered the rival contentions and on perusal of the facts on record, we find that the Additional Commissioner's order is self contradictory on facts. We further find that in the facts of the instant case, the privity of contract is between the appellant - M/s JOGPL and the service receiver, namely; M/s Transocean INC, located in USA. Further, under the arrangement instead of ONGC giving payments of the full amount to M/s Transocean INC, under

the "Management Consultancy Agreement", ONGC have paid the bills of the appellant - M/s JOGPL on behalf of M/s Transocean INC and debited their account (M/s Transocean) in its books, so as to reduce the transaction in foreign currency and remittance of foreign currency abroad. Thus, in the terms of *J. B. Boda* – 1997 (223) ITR271 (SC) (supra) case, the facts are squarely covered as held in that case, even if less remittances is sent outside amounts to receiving of remittance in convertible foreign exchange. Accordingly, we find that both the conditions of Export of service under the export of service rules are satisfied that is rendering of service from India and received by receiver abroad and further receipt of consideration in convertible foreign exchange. Accordingly, we allow the appeals with consequential benefits to the appellants and set aside the impugned order

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Cerified True Copy
23/05/2017
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सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
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