

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 51293 OF 2022

(Arising out of Order-in-Original No. 01/JC/CGST/DSC/2021-22 dated 08.04.2021 passed by the Joint Commissioner of Central Goods & Service Tax, Delhi South)

HLS Asia Ltd.

109, Aurobindo Place,
Huaz Khas, New Delhi
110016

....Appellant

VERSUS

**Principal Commissioner, CGST,
Delhi South,**

2nd & 3rd Floor, EIL Annexe Building,
Plot 2B, Bhikaji Cama Place,
New Delhi-110066

....Respondent

APPEARANCE:

Shri Kunal Agarwal, Advocate for the Appellant
Shri S.K. Meena, Authorized Representative for the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 21.11.2025

FINAL ORDER NO. 51800/2025

JUSTICE DILIP GUPTA:

HLS Asia Ltd.¹ has assailed the order dated 31.01.2022 passed by the Commissioner (Appeals- II) Central Tax/ Excise, Delhi² by which the order-in-original dated 08.04.2021 passed by the Joint Commissioner has been upheld and the appeal has been dismissed.

2. The issue that arise for consideration in this appeal is whether the compensation received by the appellant for equipments/tools "Lost-in-

1. the appellant
2. the Commissioner (Appeals)

Hole"³ while providing drilling service to the customers is required to be included in the value of taxable service for the purpose of payment of service tax.

3. The appellant provides oil field related services to exploration and production companies such as Oil and Natural Gas Corporation Ltd.⁴ These exploration and production companies are engaged in the business of producing oil and gas, which involves locating and extracting oil and gas.

4. The appellant entered into an Agreement dated 18.10.2013 with ONGC under which the appellant agreed to provide wire-line logging, perforation, and TCP-DST services⁵ at the offshore and onshore locations of ONGC for consideration agreed in Clause 7.1 of the Agreement.

5. In terms of the Agreement dated 18.10.2013, the appellant bought and imported special equipment tools from overseas suppliers to render the Services to ONGC. These special equipment tools were used by and under the supervision and control of the appellant for rendering the Services by the appellant.

6. These equipment/tools were imported and cleared for use under the Agreement dated 18.10.2013 without payment of customs duties by availing benefit under Serial No. 358 of the Notification No. 12/2012-Customs dated 17th March 2012⁶. The appellant furnished the Essentiality Certificate issued by the Director General of Hydrocarbon⁷ to the Customs Authority certifying that the equipment/tools imported

3. LIH
4. ONGC
5. the Services
6. the Customs Notification
7. DGH

were required for petroleum operations and were imported for execution of the specified contract as per condition 43 prescribed under the Customs Notification.

7. The imported equipment/tools were used by the appellant in providing Services which were carried out beneath the surface of the earth. These equipment/tools remained in the control and possession of the appellant and were, at all times, operated by the engineers/skilled personnel appointed by the appellant. The appellant charged monthly equipment rental and personnel charges from ONGC. The appellant duly discharged service tax on the monthly equipment rental and personnel charges and same has not been disputed by the Department.

8. As the Services were carried out beneath the surface of the earth, there was a likelihood that some equipment /tools may either get stuck or lost due to uncontrollable or unforeseen downhole environmental situations in the oil and gas wells. Such equipment/tools which are stuck and cannot be retrieved or are lost are termed as LIH equipment.

9. These specialised equipment /tools were crucial and valuable to the appellant and their loss/damage brings disruption in provisioning of the Services. The Appellant had, therefore, to replace the specialised tools/equipment immediately to continue the provisioning of the Services under the Agreement. Once replaced, the appellant also discharged service tax on the rental value for use of the new and replaced equipment/tools.

10. As the loss of equipment/tools in the hole was accidental and beyond the control of either the appellant or ONGC, it was a common oil field service industry commercial practice and condition of drilling or logging and perforating service contracts that the service recipient

would compensate the service provider by paying the agreed value of such damaged / lost equipment/tools. This is based on the principle that such loss cannot be borne by service provider as against petroleum operator who takes petroleum exploration and production on principles of big risk and reward and thus has to subsume such risk and loss.

11. Accordingly, the appellant and ONGC agreed to include a condition in the Agreement dated 18.10.2013 that ONGC would fish for retrieval of such lost or damaged equipment/tool at its risk and cost and would be liable to pay compensation to the appellant for loss of or damage to such equipment/tools. This particular condition is covered in Clause 13 of the Special Contract Conditions.

12. Upon loss of equipment/tools, the appellant immediately informed ONGC of the extent of loss and the procurement details pertaining to the loss. ONGC then carries out verification of the LIH equipment/tools. The appellant, thereafter raises an invoice of the depreciated value to the ONGC for reimbursement of LIH equipment/tools as per the formula provided in the Contract. The ONGC approves the calculation and makes payment for LIH equipment/tools only if it is satisfied that LIH did not occur due to gross negligence/mistake of the appellant.

13. As these specialised equipment/tools were imported without payment of customs duty in accordance with the Customs Notification, ONGC also approached and informed DGH about the loss of equipment/tools. Upon verification, the DGH issued a certificate addressed to ONGC confirming that the imported equipment/tools were lost in hole and were not retrievable. This allowed the appellant to continue to avail the benefit of customs duty exemption under the Customs Notification.

14. The appellant claims that as ONGC was only compensating and reimbursing the loss suffered by the appellant, the appellant did not pay any service tax as it was not for any service under the agreement.

15. Pursuant to an audit, a show cause notice was issued to the appellant for the period from 2013-2014 to 2014-2015, whereby demand of service tax of Rs. 1,33.74,539 was proposed on the amount of compensation received towards LIH equipments/tools on the premise that the amount charged and received by the appellant for the LIH equipment/tool was nothing but consideration for the services. It also alleged that the LIH equipment/tools appeared to be consumables for providing the Services, and thus, were a part of the gross value charged for the services rendered to ONGC. Thus, the reimbursement for LIH equipment/tools was the recovery of cost incurred by the appellant in course of providing taxable services to the client, and, therefore, would be includable in the value of service as per rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006⁸.

16. The appellant filed a reply to the show cause notice and denied the allegations made therein.

17. The Joint Commissioner by order dated 09.04.2021 confirmed the demand and the appeal filed by the appellant before the Commissioner (Appeals) was dismissed on 01.02.2022.

18. Shri Kunal Agarwal, learned counsel for the appellant submitted that the issue involved in this appeal is covered by a decision of this Tribunal in **M/s Halliburton Offshore Services Inc. vs. Additional Director General (Adjudication), New Delhi**⁹.

8. Valuation Rules

9. 2025 (4) TMI 245-CESTAT NEW DELHI

19. Shri S.K. Meena, learned authorized representative appearing for the department has, however, placed reliance upon the order passed by the Commissioner (Appeals).

20. The Division Bench of this Tribunal in **Halliburton Offshore Services** examined similar issue namely, whether the compensation received by the appellant for the LIH equipments/tools while providing drilling service to the customers is required to be included in the value of taxable service for the purpose of payment of service tax and held that it cannot be included. The relevant observations are as follows:

“**15.** As noticed above, the issue that arises for consideration in this appeal is as to whether the compensation received by the appellant for the LIH equipments/tools while providing drilling service has to be included in the value of taxable service.

24. The contention advanced by the learned senior counsel appearing for the appellant is that the compensation received by the appellant from the customers for LIH equipments/tools is on account of an indemnity contract and not on account of any service and, therefore, this amount cannot be included in the value of taxable service. In this connection, learned senior counsel placed reliance on the decision of the Tribunal in Balaji Enterprises.

25. The contention advanced by the learned senior counsel for the appellant deserves to be accepted. Once the equipments/tools are declared as LIH equipments/tools, the appellant would not receive any charges for the same from the customer since such equipments/tools would not be assisting in the drilling. In fact, these equipments/tools are replaced and then the replaced equipments/tools are used for drilling purposes. The appellant did not receive any amount towards the services as what the appellant received was compensation, which is an amount in terms of the contract and not towards any service.

Thus, the compensation amount is not towards any
"consideration" for a taxable service."

21. In view of the aforesaid decision of the Tribunal in **Halliburton**, the impugned order dated 10.02.2022 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Kritika