# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 60264 of 2013**

(Arising out of Order-in-Original No. 47/Commissioner/2013 dated 06.08.2013 passed by the Commissioner of Central Excise & Service Tax, New Delhi)

DATE OF HEARING : 23.06.2017
DATE OF DECISION : 23.06.2017

**M/s Gail (India) Ltd.** …. **Appellants**
(Rep by Sh. Karan Sachdev, Adv.)

VERSUS

**CST, New Delhi** …. **Respondent**
(Rep. by Sh. Amresh Jain, DR)

**CORAM** : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
**HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 54545/2017**

**PER B. RAVICHANDRAN :**

The present appeal is filed by the assessee-Appellants against the order-in-original no. 47/Commissioner/2013 dated 06.08.2013 passed by the Commissioner of Central Excise & Service Tax, New Delhi.

2. The assessee-Appellants in collaboration with Indian Oil Company Ltd. and Bharat Petroleum Corporation Limited had set up two joint venture companies. In pursuance of the arrangement for

setting up the said joint venture companies, they have deputed certain qualified technical staff to these companies for performing the assigned duties. The Revenue entertained the view that such activity will be liable to be taxed under the category of 'Manpower Recruitment or Supply Agency's Service' in terms of Section 65(68) read with Section 65(105)(k) of the Finance Act, 1994. Accordingly, proceedings were initiated against the assessee-Appellants which resulted in the impugned order confirming the Service Tax liability of Rs. 91,38,790/- along with equal amount of penalty. The period covered is October 2006 to March 2011.

3. We have heard both sides and perused the record. The learned counsel for the assessee-Appellants submitted that they are not a Manpower Recruitment or Supply Agency. They are a premium Government of India undertaking engaged in gas processing, distribution and marketing of natural gas. We have perused the terms of joint venture agreement. It is clear that, as a part of their obligation in setting up of the said joint venture, the assessee-Appellants are required to depute some qualified technical staff to attend the work in the joint venture companies. They have received the amount to be paid as salary to these employees from such joint venture companies on actual basis. The original authority held that such receipt of consideration is liable to tax under the above said category. We find that similar set of facts have come up for consideration before this Tribunal in various cases and one such reference can be made to the decision of **ONGC ,vs CST, New Delhi,** Final Order No. 52554/2016 dated 05.07.2016, wherein the Tribunal while dealing with a similar situation had held that, no tax

liability arise for such activity under category "recruitment or supply of manpower". Reference can also be made to the decision of the Hon'ble Gujarat High Court in the case of **Commissioner of Service Tax vs Arvind Mills Ltd.,** 2014 (35) STR 496 (Guj.) and of the Hon'ble Allahabad High Court in the case of **CCE vs Computer Sciences Corporation India Pvt. Ltd.,** 2015 (317) STR 62 (All.).

4. Following the ratio of these decisions, we find that the assessee-Appellants cannot be put to tax liability under the category of 'Manpower Recruitment or Supply Agency's Service' for the activity now under dispute. Accordingly, we set aside the impugned order and allow the appeal.

5. In the result, the appeal filed the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

**(B. RAVICHANDRAN)**
**MEMBER (TECHNICAL)**

**(JUSTICE (Dr.) SATISH CHANDRA)**
**PRESIDENT**

Golay