

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

REGIONAL BENCH – COURT NO.1

**Service Tax Appeal No.75475 of 2024**

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.285/GHY(A)/Com/ST/DIB/2023 dated 18.05.2023 passed by Commissioner (Appeals) of CGST & Excise, Guwahati)

**Shri Sujit Gogoi**

(Ghandhi Nagar, PO-Makum, Dist.-Tinsukia, Pin-786170, Assam)

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Guwahati**

(3<sup>rd</sup> Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001)

**Respondent**

Appearance:

Mr.Amit Kumar, Advocate for the Appellant

Mr.S.S.Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.75988/2024**

DATE OF HEARING : 09 .05.2024

DATE OF PRONOUNCEMENT : **04.06.2024**

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed against the appellant for the period October, 2014 to March, 2015 (upto June, 2017) by issuance of show-cause notice dated 28.12.2020 by invoking extended period of limitation.

2. The facts of the case are that the appellant is engaged in providing contract service directly or sub-contract works like construction of roads and other civil contracts under Oil India Limited with Vendor Code No.402330.

2.1 The appellant was registered with the Service Tax Department and whereas the appellant is liable to pay service tax and they were paying service tax.

2.2 An audit was conducted for the period April, 2011 to March, 2016 and the report thereof was submitted on 05.10.2016 where the appellant was directed to make the payment of Rs.2,77,928/-, which the appellant has also been paid. Thereafter, the appellant was issued a notice on 06.03.2022 for submitting ST-3 Returns for the Financial Year 2014-15 to 2017-2018, copy of contract agreements, invoices and other documents. But the appellant did not submit the documents. Therefore, it was concluded that the appellant has collected service tax and not paying service tax to the Department on the basis of Form 26AS collected from the Income Tax Department and a show-cause notice was issued by invoking extended period of limitation.

2.3 The matter was adjudicated. The demand of service tax was confirmed. The order was challenged by the Id.Commissioner (Appeals), who observed that the appellant has filed the documents, but he confirmed the demand against the appellant.

2.4 Against the said order, the appellant is before us.

3. Today, when the matter was called, the Id.Counsel for the appellant submits that it is a fact that the audit was conducted for the period April, 2011 to March, 2016 and as per the audit report, a demand of Rs.2,77,928/- was payable by the appellant, which has been paid by the appellant vide challan dated 01.08.2016. It is his submission that whole of the demand has been raised on the basis of Form 26AS obtained from the Income Tax Department, which is not sustainable. As the appellant is engaged in the construction of roads, which is covered under Negative List and no service tax is payable by the appellant. Therefore, the demand against the appellant is not sustainable.

4. On the other hand, the Id.A.R. for the Revenue, submits that the appellant did not submit the documents as demanded before issuance of show-cause notice. Therefore, the demand has rightly been confirmed against the appellant.

5. Heard both the parties and considered the submissions.

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6. We find that it is a fact on record that the audit was conducted for the period April, 2011 to March, 2016 and the report thereof is extracted herein below :



भारत सरकार/GOVERNMENT OF INDIA  
OFFICE OF THE ASSISTANT COMMISSIONER  
केन्द्रीय उपायय शुल्क एवं सेवाकर /CENTRAL EXCISE & SERVICE TAX  
DIBRUGARH AUDIT CIRCLE-II  
Dr. Lila Gogoi Path, Milan Nagar, Dibrugarh-786003  
Ph: 0373 2319795 Fax 0373-2319765

Email-dib.audit.circle2@gmail.com      dib-audit.circle2@gov.in

Ext-203

AUDIT REPORT NO.III(10)92/AUDIT/DIB/CIR-II/2015-16

AUDIT REPORT IN RESPECT OF M/s. SUJIT GOGOI, Gandhi Nagar, Makum, Tinsukia

|    |                                                                                                   |                                                                                                                 |
|----|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| 1  | Name & Address of the taxpayer                                                                    | M/s. SUJIT GOGOI, Gandhi Nagar, Makum, Tinsukia                                                                 |
| 2  | Its            Regional Office<br>Local Head Office<br>Corporate office                           | Makum, Tinsukia                                                                                                 |
| 3  | Status of the taxpayer                                                                            | Proprietorship Firm                                                                                             |
| 4  | Commissionerate<br>Division<br>Range<br>Name of the Range Superintendent<br>Name of the Inspector | : - Dibrugarh<br>: - Tinsukia<br>: - Tinsukia Service Tax Range<br>: - Sri. Partha Roy<br>: - Sri. Kalidas Paul |
| 5  | Name of taxable services provided to customers                                                    | Work Contract Services                                                                                          |
| 6  | Service Tax Registration Number                                                                   | ACCPG1258QSD001                                                                                                 |
| 7  | Exemption Notification No. and its effective date along with gist of exemption notification       | --                                                                                                              |
| 8  | Date of last audit                                                                                | NA                                                                                                              |
| 9  | Period for which current audit undertaken                                                         | April' 2011 to March 2016                                                                                       |
| 10 | Dates on which audit undertaken                                                                   | 29.07.2016                                                                                                      |
| 11 | Unconfirmed demand, if any                                                                        | --                                                                                                              |
| 12 | Confirmed demand, if any                                                                          | --                                                                                                              |
| 13 | Appeal filed, if any<br>a. By Department<br>b. By Assessee                                        | NA                                                                                                              |
| 14 | Duty, Interest and penalty paid during the current audit period                                   | Rs. 11,90,950/- (2013-14 to 2015-16)                                                                            |
| 15 | No. of Revenue Paras                                                                              | Revenue :- 1                                                                                                    |
| 16 | No. of procedural Paras                                                                           | Technical :- 0                                                                                                  |
| 17 | Total Revenue involved in Audit Para                                                              | Rs. 2,77,928/-                                                                                                  |

Part-II

| Audit Para No. | Gist of objections                | Revenue implications, if any (in Rs.) | Assessee's agreement - yes/No. if No, reasons for disagreement | Department's conclusion with reasons |
|----------------|-----------------------------------|---------------------------------------|----------------------------------------------------------------|--------------------------------------|
| 1              | During the course of audit, while | Rs.                                   | Assessee agreed the                                            | Accepted and SCN to be               |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                       |                                                                                                                                                                        |                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| <div>verifying ST3, Bills, Ledgers, Profit and Loss statement, Form 26 AS of Income Tax, Trial Balance etc in respect of M/s. Sujit Gogoi, Gandhi Nagar, Makum, Tinsukia, Assam, a Service Provider for Works Contract Service registered to this Department, for the period 2010-11 to 2015-16, it is found that they have not paid Service Tax for an amount of Rs. 2,77,928.00 ( including Edu Cess and SHE Cess ) under Works Contract Service for the financial year 2011-12. As per the statement submitted and bills provided during the verification, Service Tax was not paid against bill no. 1 and 2 dated 01.04.2011 and 17.06.2011 for values of Rs.1,40,249 and Rs. 1,37,679 respectively. Hence, they are liable to pay Service Tax of Rs. Rs. 2,77,928.00 ( including Edu Cess and SHE cess ) and Interest thereon and applicable penalty as the figures are not disclosed violating Section 78 (b) of Finance Act, 1994 as amended.</div> | <div>2,77,928/-</div> | <div>above point and paid Rs. 2,77,928/- (only the duty amount ) vide challan No. 02343 dated 1.08.2016. Interest and applicable penalty is yet to be recovered.</div> | <div>issued for Interest and Penalty.</div> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|

Sd/-  
(P. Katakya )  
Assistant Commissioner  
Dibrugarh Audit Circle -II

C.No. III(10)92/Audit/Dib/Cir-II/15-16 /281 - 84  
Copy for information and necessary action to:-  
1. The Commissioner, Customs, Central Excise & Service Tax, Guwahati Audit Commissionertate  
2. The Assistant Commissioner, Central Excise & Service Tax, Tinsukia Division  
3. The Superintendent, Tinsukia ST Range, Tinsukia  
✓ 4. M/s. SUJIT GOGOI, Gandhi Nagar, Makum, Tinsukia

05/10/16  
(P. Katakya )  
Assistant Commissioner  
Dibrugarh Audit Circle -II

As per the Audit report, the appellant has paid the service tax as demanded. In that circumstances, the demand for the period up to March, 2016, is not sustainable against the appellant.

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7. Further, as per the impugned order, the demand has been raised up to June, 2017, which is not included in the year 2016-2017. The said demand has been raised on the basis of Form 26AS. In this regard, the Works Contracts are extracted herein below :

|                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                       | <b>ऑयल इंडिया लिमिटेड</b><br>(भारत सरकार का उद्यम) पंजीकृत कार्यालय : दुलियाजान, असम<br><b>Oil India Limited</b><br>(A Government of India Enterprise) Registered Office: Duliagan, Assam                                                                                                                                                                                                                                                                                            | <p style="text-align: right;">- Page 2 -</p> <b>CONTRACTS DEPARTMENT</b><br>Fax : (91) 374-2803549<br>Tel : (91) 374-2800548<br>e-mail : contracts@oilindia.in<br>Website : www.oil-india.com |
| Ref. CONT/HC/C-5/1233 /2014                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Date: 28.11.2014                                                                                                                                                                              |
| <b><u>TO WHOM IT MAY CONCERN</u></b>                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                               |
| This is to certify that <b>SUJIT GOGOI</b> , GANDHI NAGAR, MAKUM, P.O. MAKUM, TINSUKIA, ASSAM was awarded the following contract by OIL INDIA LIMITED, Duliagan, which they have executed/completed as per terms of the contract.                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                               |
| Contract No.                                                                                                                                                                                                                                           | : 6101757                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                               |
| Description of the work                                                                                                                                                                                                                                | : Improvement of TINSUKIA- HILLIKHA Road 2.60 km length beyond 13.40km from Tinsukia side by earth filling where required, providing Granular Sub-base, gravelling, WBM course & premix surfacing including supply of all materials except bitumen, cement etc. and supply of all requisite plants & equipment including Road roller road ( Part of Tinsukia Hillikha road, Approx. length 2.6 Km.) in Barekuri area, Tinsukia District & Development of Naoholia to well #511 road. |                                                                                                                                                                                               |
| Original Contract Cost                                                                                                                                                                                                                                 | : Rs. 80, 98,372.96                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                               |
| Amended Contract Cost                                                                                                                                                                                                                                  | : Rs.96, 46,160.21                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                               |
| Vendor Code No                                                                                                                                                                                                                                         | : 402330                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                               |
| Name of the Firm                                                                                                                                                                                                                                       | : <b>SUJIT GOGOI</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                               |
| Starting date as per work order                                                                                                                                                                                                                        | : 21.01.2008                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                               |
| Completion Date (As per work order):                                                                                                                                                                                                                   | : 20.07.2008                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                               |
| Actual Date of Completion                                                                                                                                                                                                                              | : 29.02.2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                               |
| Final Value of work done                                                                                                                                                                                                                               | : Rs. 96, 46,160.21 (Rupees Ninety Six Lakh Forty Six Thousand One Hundred Sixty & Paise Twenty One) only.                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                               |
| Work Performance                                                                                                                                                                                                                                       | : Satisfactory                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                               |
| <div style="text-align: right;"> <br/> <b>HEAD CONTRACTS</b><br/> <b>RESIDENT CHIEF EXECUTIVE</b> </div> <div style="text-align: left;">         For       </div> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                               |



|                                                                                                                                                                                                                                 |                                                                                                                                                                                            |                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                | <b>ऑयल इंडिया लिमिटेड</b><br>(भारत सरकार का उद्यम) पंजीकृत कार्यालय : दुलियाजान, असम<br><b>Oil India Limited</b><br>(A Government of India Enterprise) Registered Office : Duliagan, Assam | <b>CONTRACTS DEPARTMENT</b><br>Fax : (91) 374-2803549<br>Tel : (91) 374-2800548<br>e-mail : contracts@oilindia.in<br>Website : www.oil-india.com        |
| Ref:CONT/HC/626/2013                                                                                                                                                                                                            |                                                                                                                                                                                            | Date : 08.08.2013                                                                                                                                       |
| <b>TO WHOM IT MAY CONCERN</b>                                                                                                                                                                                                   |                                                                                                                                                                                            |                                                                                                                                                         |
| This is to certify that Sujit Gogoi, Gandhi Nagar, Makum, P.O. Makum, Dist. Tinsukia, Assam was awarded the following contract by OIL INDIA LIMITED, Duliagan, which they have executed/completed as per terms of the contract. |                                                                                                                                                                                            |                                                                                                                                                         |
| Contract No.                                                                                                                                                                                                                    | :                                                                                                                                                                                          | 6105450/CDI                                                                                                                                             |
| Description of the work                                                                                                                                                                                                         | :                                                                                                                                                                                          | DEVELOPMENT OF APPROACH ROAD OF LOC. DFP (WELL NDR#1) INCLUDING PROVIDING ROAD ROLLER SERVICES (i) 4.50 kms BITUMINOUS ROAD. (ii) 9.00 kms GRAVEL ROAD. |
| Original Contract Cost                                                                                                                                                                                                          | :                                                                                                                                                                                          | Rs. 1,02,11,865.57                                                                                                                                      |
| Amended Contract Cost                                                                                                                                                                                                           | :                                                                                                                                                                                          | Rs.97,77,158.65                                                                                                                                         |
| Vendor Code No                                                                                                                                                                                                                  | :                                                                                                                                                                                          | 402330                                                                                                                                                  |
| Name of the Firm                                                                                                                                                                                                                | :                                                                                                                                                                                          | Sujit Gogoi                                                                                                                                             |
| Starting date as per work order                                                                                                                                                                                                 | :                                                                                                                                                                                          | 01.08.2011                                                                                                                                              |
| Completion date(As per work order)                                                                                                                                                                                              | :                                                                                                                                                                                          | 26.12.2011                                                                                                                                              |
| Actual Date of Completion                                                                                                                                                                                                       | :                                                                                                                                                                                          | 20.12.2011                                                                                                                                              |
| Final Value of work done                                                                                                                                                                                                        | :                                                                                                                                                                                          | Rs.97,55,982.25 ( Rupees Ninety Seven Lakhs Fifty Five Thousand Nine Hundred Eighty Two & Paise Twenty Five) only.                                      |
| Work Performance                                                                                                                                                                                                                | :                                                                                                                                                                                          | Satisfactory                                                                                                                                            |
| For                                                                                                                                                                                                                             |                                                                                                                                                                                            | <br><b>HEAD- CONTRACTS</b><br><b>RESIDENT CHIEF EXECUTIVE</b>      |

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**ऑयल इंडिया लिमिटेड**  
(भारत सरकार का उद्यम) पंजीकृत कार्यालय : दुलियाजान, असम  
**Oil India Limited**  
(A Government of India Enterprise) Registered Office: Duliagan, Assam

**CONTRACTS DEPARTMENT**  
Fax : (91) 374-2803549  
Tel : (91) 374-2800548  
e-mail : contracts@oilindia.in  
Website : www.oil-india.com

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**Ref.No. OIL/CONT/V/C/2772/2018-19** **Date: 22.05.2018**

**TO WHOM IT MAY CONCERN**

This is to certify that **M/s. Sujit Gogoi, Gandhi Nagar, Makum, PIN-786170, Assam** was awarded the following contract by **Oil India Limited, Duliagan** which they have executed / completed as per terms and conditions of the contract.

|                                  |                                                                                                                           |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <b>CONTRACT NO</b>               | : 6110418                                                                                                                 |
| <b>DESCRIPTION OF WORK</b>       | : Construction of existing approach road of length 4.00 km from Baghjan Tea Estate Tinali to Baghjan EPS in Baghjan area. |
| <b>ORIGINAL CONTRACT COST</b>    | : ₹1,65,39,479.48                                                                                                         |
| <b>AMENDED CONTRACT COST</b>     | : ₹1,62,40,114.90                                                                                                         |
| <b>VENDOR CODE</b>               | : 402330                                                                                                                  |
| <b>STARTING DATE</b>             |                                                                                                                           |
| (as per work order)              | : 08.02.2017                                                                                                              |
| <b>COMPLETION DATE</b>           |                                                                                                                           |
| (as per work order)              | : 27.06.2017                                                                                                              |
| <b>ACTUAL DATE OF COMPLETION</b> | : 26.09.2017                                                                                                              |
| <b>FINAL VALUE OF WORK DONE</b>  | : ₹1,62,39,383.44 (Rupees One Crore Sixty Two Lakh Thirty-Nine Thousand Three Hundred Eighty-Three and paise Forty-Four). |
| <b>WORK PERFORMANCE</b>          | : Very good.                                                                                                              |

  
(G.C. DEVCHOUDHURY)  
**CGM CONTRACTS (HoD)**  
**FOR- RESIDENT CHIEF EXECUTIVE**

As per the said Works Order, it is clear that the appellant was engaged in the activity of construction of road, which is exempted from payment of service tax.

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8. In that circumstances, the demand of service tax is not sustainable against the appellant. As the demand is not sustainable, consequently, penalty is also not imposable on the appellant.

9. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open court on **04.06.2024**)

Sd/

**(Ashok Jindal)**  
**Member (Judicial)**

Sd/  
**(K.Anpazhakan)**  
**Member (Technical)**

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