CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86195 OF 2015

[Arising out of Order-in- Original Appeal No: 42/ST-VII/RS/2014 dated 20th February 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

Deepwater Pacific 1 Inc
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 86231 OF 2015

[Arising out of Order-in- Original Appeal No: 44/ST-VII/RS/2014 dated 27th February 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

Transocean Offshore Deepwater Drilling Inc
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 86232 OF 2015

[Arising out of Order-in- Original Appeal No: 30/ST-VII/RS/2014 dated 30th January 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

Transocean Offshore International Ventures Ltd
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPLICATION (EH) NO: 85181 OF 2021
(on behalf of respondent)
IN
SERVICE TAX APPEAL NO: 86278 OF 2015

[Arising out of Order-in- Original Appeal No: 46/ST-VII/RS/2014 dated 16th March 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

R & B Falcon (A) Pty Ltd
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 86418 OF 2015

[Arising out of Order-in-Original No: 47/ST-VII/RS/2014 dated 30th March 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

Shelf Drilling International Inc
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

APPEARANCE:

Shri Gajendra Jain, Advocate and Shri Aditya Jain, Advocate for the appellant

Shri Nitin M Tagade, Joint Commissioner (AR) for the respondent

AND

SERVICE TAX APPEAL NO: 86279 OF 2015

[Arising out of Order-in-Original No: 45/ST-VII/RS/2014 dated 11th March 2015 passed by the Commissioner of Service Tax, Mumbai – VII.]

Transocean Discoverer 534 LLC
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai, Mumbai - 400076 …***Appellant***

versus

Commissioner of Service Tax
Mumbai –VII
115 New Central Excise Building, M K Road
Churchgate, Mumbai - 400020 ***…Respondent***

APPEARANCE:

Shri Ramnath Prabhu, Advocate for the appellant

Shri Nitin M Tagade, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLEMR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85560-85565/2022

DATE OF HEARING: 07/06/2022
DATE OF DECISION: 07/06/2022

PER: C J MATHEW

In this set of appeals arising from the orders in-original no. 42/ST-VII/RS/2014 dated 20th February 2015, 44/ST-VII/RS/2014 dated 27th February 2015, 30/ST-VII/RS/2014 dated 30thJanuary 2015, 46/ST-VII/RS/2014 dated 16th March 2015, 47/ST-VII/RS/2014 dated

30th March 2015 and 45/ST-VII/RS/2014 dated 11th March 2015 of Commissioner of Service Tax, Mumbai – VII, the issue in dispute lies within the narrow compass of exigibility to tax of ‘service’ rendered in the ‘exclusive economy zone (EEZ)’ of India between July 2009 and February 2010.

2. The appellants herein were in the business of rendering of ‘drilling service’ taxable under section 65(105)(zzzy) of Finance Act, 1994 and had not been discharging tax liability claiming that Finance Act, 1994 did not extend to the area of their operation in the ‘exclusive economic zone (EEZ)’. According to them, by notification no. 1/2002-ST dated 1st March 2002, the provisions of Finance Act, 1994 were extended for the first time to

> *‘designated area in the continental shelf of exclusive economic zone of India’*

and which by notification no. 21/09-ST dated 7th July 2009 stood revised by

> *‘In the said notification, for the portion beginning with the words “designated areas in the Continental Shelf” and ending with the words “with immediate effect”, the words “installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India” shall be substituted.’*

Notification 14/2010-ST dated 27th February 2010 effected further amendment by incorporating tabulated locations to bring the entire area of the continental shelf and exclusive economic zone of India, as well as installation, structures and vessels therein, within the ambit of Finance Act, 1994. According to Learned Counsel for the appellants, taxability after 27th February 2010 is not in dispute and likewise of non-taxability prior to 7th July 2009 in view of the specific nature of their activities. This, according to him, has been settled by the Hon'ble High Court of Bombay in the *Greatship (India) Ltd v. Commissioner of Service Tax, Mumbai – I [2015 (39) STR 754 (Bom.)]* setting aside the order of the Tribunal holding them liable to tax for the disputed period thus

> *'35. In the present case, we find that the plain reading of the 2009 Notification would give a clear meaning and it cannot be said to be obscure. The words are clear and plain capable of giving only one meaning that the provisions of Chapter V of the Finance Act are extended to the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India. We find that the words used in the said notification are not capable of giving two meanings. As already discussed hereinabove, prior to 2002, the areas in the Continental Shelf and Exclusive Economic Zone of India were not brought under the purview of Service Tax net. Only by the Notification of 2002, the said provisions were made applicable to the areas in the Continental Shelf and Exclusive Economic Zone of India, only insofar as the areas which were covered under the 1986 and 1996 notifications. By amendment to 2002 Notification by the 2009 Notification, the services rendered to installations, structures and vessels were brought in the Service Tax net irrespective of the fact that as to whether the said*

installations, structures and vessels were situated in the areas covered under the 1986 and 1996 notifications or beyond such areas. However, for the first time in 2010, the tax net has been widened so as to include almost all the services related to prospecting or extraction or production of mineral oil and natural gas, including the services rendered to or by such installations, structures and vessels.

36. It is further to be noted that it is a settled principle of law that, it is presumed that each and every word used by the legislature is with some intention. It is equally settled that each and every word used by the legislature is to be required to be given meaning and not ignored. It is to be noted that in the 2010 notification no such words like "it is clarified for removal of doubts" or "it is declared" are used. However, even in the absence of such words, a statute could be construed to be declaratory or clarificatory, if upon interpretation of the same such a meaning could be derived. As such, we will have to gather the legislative intent from the words used in the statute. The 2010 Notification uses the words "in supersession of the Government of India, in the Ministry of Finance (Department of Revenue) Notification No. 1/2002-S.T., dated 1-3-2002". It could thus be clear that the legislative intent is to supersede the 2002 Notification as amended in 2009 and substitute with 2010 Notification. The legislative intent could further be gathered from the following words : "except as things done or omitted to be done before such supersession." It would thus be seen that what has been saved by the notification upon supersession is only in respect of things done or omitted to be done before supersession, i.e., before 27-2-2010. The words used are "Central Government hereby extends". It is thus clear upon plain reading of 2010 Notification, that the legislative intent of 2010 Notification is

(i) that it supersedes the 2002 Notification, it

consequently also supersedes 2009 amendment which was brought in 2009 to the 2002 Notification,

(ii) *it only saves the things done or omitted to be done before such supersession and*

(iii) *from the date of issuance it extends the provisions of Chapter V of the Finance Act, 1994 to the areas specified in column 2 of Table in the Continental Shelf and Exclusive Economic Zone of India for the purpose as mentioned in column 3 of the said Table.*

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41. As already discussed hereinabove, it cannot be said that the meaning as gathered from the plain reading of the words in 2009 Notification or 2010 Notification can be said to be leading to obscure or anomalous situation. In that view of the matter, we find that the contention in that regard also deserves to be rejected.

42. In view of settled legal position, we find that the 2010 Notification cannot be said to be clarificatory in nature, but it brings about substantive change in law. Whereas the 2002 Notification as amended by 2009 Notification is applicable only to the services rendered to installations, structures and vessels, the 2010 Notification widens the tax scope and amongst various other services also brings into the Service Tax net the services rendered to or by the installations, structures and vessels.

It can thus be seen that the present transaction, which is in the nature of providing services by the vessels of the appellant for the purpose of prospecting mineral oil and as such is a service consumed by the seabed of Continental Shelf of India would come in the tax net only after 2010 Notification came into effect. We are of the considered view *that the said service cannot be said to be a service rendered to the installations, structures and vessels. Not only this, but the respondent also in the Order-in-Original has noted that the appellant is discharging applicable Service Tax on the services received by installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India but was not discharging the Service Tax on services consumed by the seabed of Continental Shelf of India.*

43. Since we have held that the transactions involved in the present case is not taxable under the Notification of 2009, and as such, the demand of tax would not be sustainable, we do not find it necessary to go into the question as to whether since the contract was prior to the Notification dated 7-7-2009, the demand for tax could be made or not.'

3. We have heard Learned Authorised Representative who has reiterated the impugned order.

4. In view of the settled finding of the Hon'ble High Court of Bombay of non-taxability between July 2009 and February 2010, insofar as the 'drilling' undertaken by the appellants herein for oil exploration in the 'continental shelf and exclusive zone (EEZ)' is concerned, the impugned orders are set aside. Accordingly, these appeals are, allowed. The miscellaneous application is also disposed off as infructuous.

(Operative Part of the Order pronounced in the open court on 7th June 2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*