CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

PRINCIPAL BENCH

SERVICE TAX APPEAL No. 85028 of 2021

(Arising out of Order–in-Original No. 16/CGST-NM/Commr/KV/2020-21 dated 31.08.2020 passed by the Commissioner, CGST & CEx, Navi Mumbai)

B.G. Exploration & Production India Ltd. **...Appellant**

versus

Commissioner of CGST & CEx., Navi Mumbai **....Respondent**

APPEARANCE:

Shri Jitendra Motwani, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 30.08.2021
Date of Decision: 06.10.2021

FINAL ORDER NO. A/86962/2021

JUSTICE DILIP GUPTA:

B.G. Exploration & Production India Ltd.[1] (formerly known as Enron Oil and Gas India Ltd.) has filed this appeal to assail the order dated 31.08.2020 passed by the Commissioner of Central Tax and Central Excise, Navi Mumbai[2], by which the demand of Rs. 53.26 crores has been confirmed but the demand of Rs. 5.43 crores, which was also included in another show cause notice dated 09.12.2015

---

1. **the Appellant**
2. **the Commissioner**

issued to the Appellant, has been dropped. The Commissioner has also confirmed the demand of interest with penalties under sections 77 and 78 of the Finance Act 1994[3].

2. A show cause notice dated 16.04.2015 was issued to the Appellant for a period from October 2013 to June 2017 and it is the adjudication on this show cause notice that has led to the filing of this appeal. For the period from July 2012 to December 2014, proceedings had also been initiated against the Appellant on similar issues by a show cause notice dated 09.12.2015 and though the demand of Rs. 5.43 crores raised in the show cause notice was confirmed by an order dated 29.05.2017 passed by the Adjudicating Authority, but this order was set aside by the Tribunal in the order dated 11.06.2020 rendered in **B.G. Exploration & Production India Ltd.** vs. **Commissioner of Service Tax (Audit-I)**[4] on merits as well as for the reason that the demand was proposed for a period which fell outside the normal period of limitation prescribed under section 73(1) of the Finance Act. In the present appeal, the period from October 2013 to March 2016 is beyond the normal period of limitation contemplated under section 73(1) of the Finance Act and this would involve a demand of Rs. 38.64 crores.

3. The Appellant is primarily engaged in the business of developing, exploring and producing oil and gas from the contracted areas in Mid and South Tapti Fields and Panna & Mukta Fields (Offshore areas of Western India). Pursuant to a Notice Inviting Offers issued in 1992 for a joint venture to develop medium sized oil and gas fields, the Government of India on 22.12.1994, entered into two separate

---

3. the Finance Act
4. Service Tax Appeal No. 87085 of 2017 decided on 11.06.2020.

contracts[5] with Enron Oil and Gas India Ltd., Reliance Industries Ltd.[6] and Oil and Natural Gas Corporation Ltd.[7] for the discovery and exploitation of petroleum resources in 'Panna and Mukta' and 'Mid and South Tapti' fields[8]. The terms of the two Contracts are identical. The Appellant, RIL and ONGC shall be called 'Holders'. Under the Contracts, the Holders were required to enter into an Operating Agreement. Accordingly, Enron Oil and Gas India Ltd., RIL and ONGC entered into a Joint Operating Agreement[9] on 22.12.1994 to define their respective rights, duties and obligations with respect to their operations under the Contracts. In terms of the Agreement, liabilities incurred by any Holder were required to be borne by all the Holders in accordance with the ratio for performing their obligations. These expenses were required to debited in the joint account and cash calls raised and reimbursement taken from the Joint Account, basis the participating interest of each of the parties to the Contract. There was to be no profit margin on the reimbursement/cost charged to the joint account; in fact, such a profit was strictly prohibited under the Agreement and the same was to be charged on actuals. The present dispute pertains to only one such specie of reimbursement/cost charged to the Joint Account by the Appellant namely, salaries of employees working for the joint venture. The issue involved in this appeal, therefore, is regarding the cost of the employees and labour provided by the Appellant. The show cause notice dated 16.04.2015 alleges that the entire cost recovered by the Appellant should be

---

5. the Contracts
6. RIL
7. ONGC
8. the Contract Areas
9. Agreement

subjected to service tax recoverable from the Appellant with interest and penalty.

4. It is stated that as the Joint Venture Operations by the Holders in the Tipti Fields and Panna & Mukta Fields[10] does not have the status of a separate legal entity and cannot hire employees in its name, the Appellant, in view of the responsibilities allocated under the Agreement, appointed and hired as many numbers of employees as were required for carrying out the Joint Operations. The said employees reported to the Managing Director of the Appellant, who in turn became accountable to the Operator Board comprising the Holders. The salary expenses in terms of Article 3.2(c) of the Agreement were borne by the Holders and the Appellant paid the salaries of the employees and other costs.

5. On payment of the employee costs by the Appellant, the same was accounted as 'salary cost' in the consolidated statement for expenses of the Joint Operations. The said salary expenses paid by the Appellant were borne by the Holders in their respective participating interest i.e. 40:30:30. Even the recruitment cost, travel expenses and training expenses incurred towards the employees were borne by the Holders in proportion to their participating interest. The Appellant claims that all such charges recovered by the Appellant from RIL and ONGC were only in the nature of reimbursements, pursuant to the sharing of the salary costs amongst the three constituents of the Contract.

---

10. PMT-JV

6. A show cause notice dated 16.04.2015 was, however, issued to the Appellant. After making reference to the Contract dated 22.12.1994, the show cause notice mentions:

> "In view of the above, it appears that:-
>
> (i) "BGEPIL, Reliance Industries Ltd (RIL) and ONGC" jointly are unincorporated association of persons/joint venture (in Short "PMT-JV").
>
> (ii) "BGEPIL, RIL and ONGC" as an unincorporated association of persons i.e "PMT-JV" and "BGEPIL" individually are distinct persons, in accordance with Explanation 3(a) of Section 65B(44) of the Finance Act, 1994.
>
> (iii) BGEPIL is providing its employee i.e Manpower service to said unincorporated association of persons i.e PMT-JV and are charging salary expenses in relation to those manpower service to the PMT-JV account by way of book adjustment, thus constituting consideration within the meaning of Section 67 ibid for the provision of the said service.
>
> (iv) Based on the above said provisions of law and figures provided by BGEPIL, they required to pay the service tax amount to Rs 58,70.05.2371- (Rupees Fifty Eight Crore Sevenly Lakhs Five Thousand Two Hundred and Thirty Seven Only) for the period Oct 2013 to June 2017 as detailed in the Annexure-A attached with the SCN."

7. This show cause notice was adjudicated upon by the Commissioner by an order dated 31.08.2020. The Commissioner, in view of the provisions of section 65B (44) of the Finance Act, noticed that for a particular service to be taxable three factors namely, (i) there should be a service rendered; (ii) service should be rendered to another person; and service should be rendered for a consideration, have to be satisfied. The Commissioner thereafter, examined the provisions of the Contract, the decision of the Supreme Court in **State of West Bengal** vs. **Calcutta Club Limited**[11]**,** the decisions of the Tribunal in **Mormugoa Port Trust** vs. **Commissioner of Central Excise**[12] and **Badve Helmets Pvt. Ltd.** vs. **Commr. of C. Ex.**

---

11. 2019 (29) G.S.T.L. 545 (S.C.)
12. 2017 (48) STR 69 (Tri-Mum)

Aurangabad[13], and observed that all the three aforesaid criteria were satisfied. The Commissioner also observed it was a case of suppression of facts with intent to evade payment of service tax, as a result of which the proviso to section 73(1) of the Finance Act that extends the normal period of limitation was attracted. The Commissioner also noticed that there was a repetition/duplication of demand from October 2013 to December 2014 and accordingly, an amount of Rs. 5.43 crores that was proposed in the show cause notice dated 09.12.2015 on the same issue was reduced. The Commissioner also imposed penalty and interest.

8. Shri Jitendra Motwani learned Counsel appearing for the Appellant made the following submissions:

(i) The issue involved in this appeal stands settled by the order dated 11.06.2020 passed by the Tribunal in the Appellant's own case on the show cause notice dated 09.12.2015 issued on the same issues;

(ii) The Government of India, Enron Oil and Gas India Ltd. (which was subsequently substituted by the Appellant), RIL and ONGC had entered into a production sharing contract for the Panna- Mukta and mid and south Tapti fields in December 1994. The said Contract was an unincorporated joint venture between the Government of India, the Appellant, RIL and ONGC, entered into with a common objective of exploring oil reserves and exploiting such reserves, if commercially viable. The Contract provided for the roles and responsibilities of each of the

---

13. 20158 (10) G.S.T.L. 435 (Tri.-Mumbai)

co-venturer, the modalities for undertaking the joint venture by constituting a management committee as also for sharing of the profits. In the said public-private partnership, none of the co-venturers renders any service to the other, and each performed its obligations as a co-venturer in its own interest and in the course and furtherance of the operations of the unincorporated joint venture so as to achieve the common objective;

(iii) The Appellant had not rendered any service to the PMT-JV, nor did it receive any consideration from PMT-JV for the supposed service rendered by it;

(iv) Employing manpower for undertaking the operations of PMT-JV was Appellant's share of capital contribution to the venture;

(v) Alternatively, PMT-JV, not being a juridical person so as to enter into contracts, had employed personnel through one of its co-venturer (the Appellant) and consequently no service was rendered by the Appellant to the unincorporated joint venture. The Appellant was only acting on behalf of the unincorporated joint venture by executing the employment contract;

(vi) Explanation (3) to the definition of 'service' in section 65B(44) of the Finance Act, by virtue of which an unincorporated association and its members are treated as distinct persons, has no applicability to the facts of the present case as no service was rendered by any member of the unincorporated association to the unincorporated

joint venture. It is only in a case where service is provided by any member to the unincorporated joint venture that it can be said, by virtue of Explanation (3), that as distinct persons there could have been a service rendered interse between the two. However, in the absence of any service having been rendered, the said Explanation (3) has no application; and

(vii) The demand for the period October 2013 to March 2016 was barred by limitation, as there was no suppression of facts with an intention to evade payment of tax.

9. Shri S.K. Mathur, learned Special Counsel for the Revenue, on the other hand, placed a copy of the Appeal filed before the Bombay High Court against the order dated 11.06.2020 of the Tribunal. Learned Counsel also made reference to some of the grounds urged in the said Appeal before the High Court, as part of his submissions, which are:

(i) Supply of manpower by the Appellant to the joint venture, which is an unincorporated association of persons, for a consideration is a service on which service tax is leviable;

(ii) By virtue of Explanation (3) to section 65B(44) of the Finance Act, the Appellant and the Holders are to be treated as distinct persons and that in lieu of manpower supply to the Holders, the Appellant charged salary expenses from the Joint Venture, which is nothing but a consideration received from the joint venture against service provided by the Appellant to the joint venture; and

(iii) The Tribunal had in its earlier order dated 11.06.2020 placed reliance on the decision of the Tribunal in **Cricket Club of India** vs. **Commissioner of Service Tax, Mumbai**[14], which was a part of the batch of appeals before the Supreme Court in **Calcutta Club Ltd.**, wherein the Supreme Court in paragraph 82 of the judgement held that the principle of mutuality applies only to incorporated club or association and would not apply to an unincorporated association of body of individuals. PMT-JV, being an unincorporated association of persons, was a distinct person from the Appellant and consequently there was a liability to service tax on the consideration received by the Appellant for the service rendered by it.

10. The submissions advanced by the learned Counsel for the Appellant and the learned Special Counsel for the Department have been considered.

11. As noticed above, the period involved in the present appeal is from October 2013 to June 2017. Section 65B of the Finance Act was inserted w.e.f. 01.07.2012 and sub-section (44) of section 65B is as follows:

> **"Section 65B (44)**
>
> (44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
>
> (a) an activity which constitutes merely,—
>
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

---

14. 2015 (4) STR 973

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force."

12. Explanation 3(a), which is relevant for the purposes of this appeal, is reproduced below:

"Explanation 3. — For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

xxxxxxxxxx

13. The show cause notice dated 16.04.2015 mentions that since the Holders are an unincorporated association of persons, the Appellant and PMT-JV individually are distinct persons in view of Explanation 3(a) of section 65B (44) of the Finance Act; and since the Appellant is providing its employees to PMT-JV and is charging salary expenses to the PMT-JV account by way of book adjustment, it is receiving consideration within the meaning of section 67 of the Finance Act which would be leviable to service tax under 'manpower service'.

14. To examine this issue, it would be necessary to examine the terms of the Contract.

15. In terms of article 297 of the Constitution of India, lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone of India, vest in the Union and are to be held for the purposes of the Union. The Government of India took a policy decision to enter into

public-private partnerships with private parties, with a view to optimise production of such natural resources. Accordingly, the Government of India issued a Notice Inviting Offers for joint ventures to develop medium sized oil fields in India. Pursuant to the said Notice Inviting Offers, the Government of India entered into contracts with private parties for production of petroleum and the costs and profits were shared between the Government and the private parties as per the formula prescribed and agreed in the Contracts. The purpose of the said Contracts was to obtain capital investment and technical expertise from the private parties to achieve the objective of optimum production. The common objective was to explore, develop and produce the maximum amount of mineral resource for commercial sale.

16. The Contracts can be broadly divided into three phases, namely (i) Exploration Phase; (ii) Development Phase and (iii) Production Phase.

I. Exploration Phase

> This phase inter alia entails survey of a particular block to explore whether there is petroleum. High technical skills are involved in the said phase and heavy investment is entailed.

II. Development Phase

> This phase inter alia involves sending vessels to determine the extent of marketable mineral present in that block.

III. Production Phase

> This is the final Phase which involves installation of fresh equipment for drilling and commercial production of petroleum.

17. As noticed above, the Government of India entered into separate Contracts on 22.12.1994 with the Holders and on 14.02.2002 all the

shares of Enron Oil and Gas India Ltd. were acquired by B.G. Mumbai Holdings Ltd. and the name of Enron Oil and Gas India Ltd. was changed to M/s B.G. Exploration and Production India Ltd. (which is the Appellant). To reflect the aforesaid change in ownership of Enron Oil and Gas India Ltd., the Contract was amended on 19.01.2005, whereby the Holders were made 'Joint Operators' of the Contract and all rights and liabilities of Enron Oil and Gas India Ltd. were assumed by the Appellant. Similarly, the respective Agreements executed by the Holders for the Contract Areas were amended and restated in accordance with the amended Contract to reflect the change in ownership of Enron Oil and Gas India Ltd. to the Appellant.

18. The Contract determines the participating interest of each of the Holders, which is the respective ratio of sharing amongst the parties to the Contract. The participating interests of each of the parties, as determined in the Contract, is in the ratio of 40:30:30 between ONGC, RIL and the Appellant respectively.

19. The first two phases of the Contract, namely exploration and development require an investment cycle in which the Government did not invest. This investment was made by the Holders. In this phase, since there is a recurring need of finance/ capital investment, a joint account is created, and capital contributions are made from time to time depending upon the project requirements through 'Cash Calls'. In case the exploration is successful, the mineral is extracted. The said mineral is first used by the Holders to recover the expenses incurred and then the excess share is the profit, which is shared amongst the parties to the Contract i.e. the Government of India and the Holders in

the prescribed proportion as per the investment multiple in the terms agreed in the Contract.

20. In the event the exploration is unsuccessful, the costs incurred would have to be borne by the Holders and would not in any manner be reimbursed by the Government. Further, the ability of the Government of India and the Holders to share surplus profits is dependent upon there being a distributable surplus after deduction of the costs incurred by the Holders.

21. The question as to whether the Appellant was rendering any services to the PMT-JV, of which it was a constituent member, has been dealt with earlier by Tribunal in the decision rendered on 11.06.2020 in the case of the Appellant. This order arose out of the show cause notice dated 09.12.2015 and the order impugned in this appeal arises out of the show cause notice dated 16.04.2015. The charges levelled in the two show cause notice are identical. The relevant portion of the decision of Tribunal is reproduced below:

> "13. Under the 'negative list' regime, in which demarcation between services was superfluous, the obliteration of boundaries permitted the definition of 'service', as
>
> > '(44) …any activity carried out by a person for another for consideration, and includes a declared service, but shall not include - ..'
>
> in section 65B of Finance Act, 1994, to encompass all 'activities' save those exogenic to, and excepted in, it and aligned it with the essence of service by the expression 'for another', replacing 'to any person', to eliminate the recipient as a necessity. In the new scheme of tax, 'consideration', being the obligated recompense to the provider devolving on the person who opted for hiving off the undertaking of an activity, was no longer mere measure of value but translatable as the span of service rendered. Thus, 'service' was the extent of activity entrusted to a provider for such consideration as rendered it economically gainful to be outsourced. We now subject the expenditure booked by the appellant to test of conformity with this definition.
>
> 14. In **Cricket Club of India Ltd.** on examination of the several types of payments made to clubs by members, the

Tribunal dealt with entrance fees, held to be akin to capital contribution, thus

> '11….Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow…. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.'

before concluding that

> '14….Each category of fee or charge, therefore, needs to be examined severally to determine whether the payments are indeed recompense for a service before ascertaining whether that identified service is taxable.
>
> xxxxx
>
> 16…..Wages of employees and costs of running the establishment,…., are necessary expenses for such sustenance……. Contribution to expenses cannot, by any stretch, be deemed to be consideration for any identified service rendered.'

The principle thus espoused, and emphatically reiterated by the Tribunal in **Mormugoa Port Trust** as

> '16… the two had come together with the common objective of earning revenue by jointly rendering port services at Jetty Nos. 5A and 6A…We are therefore of the view that the agreement between the Assessee and SWPL is joint-venture between the two, where the two co-venture are jointly controlling a common activity and sharing the revenue therefrom.
>
> 17……..whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture…..All the resources and contribution of a partner enter a common pool of resources required for running the joint enterprise and the such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources the venture....'

found approval of the Hon'ble Supreme Court with dismissal of appeal of Revenue.

15. It is incumbent upon participants in collaborative undertaking to contribute capital for attainment of the common purpose. It is the nature of the undertaking, in terms of permanence and of purpose, that determines the mode of contribution. In the impugned 'production sharing contract', Government of India brings in its rights over the resources, M/s Oil & Natural Gas Corporation handles contracts and documentation, M/s Reliance Industries Ltd manages financial and commercial requirements and the appellant vested with responsibility for technical operations. The deployment of personnel is in pursuance of that obligation. No business venture can function without capital and the by-passing of

> transubstantiation of accumulated capital, in the form of cash and bank balances, into these rights and competencies does not derogate from that. Hence, the activity undertaken by the appellant with its cost equivalence recorded in the books is nothing but capital contribution. The adjudicating authority has erred in concluding that the mechanism of 'cash call' prescribed in the 'joint operations agreement' is consideration for services; it is intended as the vehicle for contribution by the participating interests to the capital requirements of the venture. As such capital contributions are obligated for the establishment and operation of a business venture, it is not 'consideration' for rendering of any taxable service.
>
> 16. From our discussion supra, we find that it is parties to the 'production sharing contract' who constitute a joint venture and that the Explanation below section 65B (44), intended to cover supply of services to a constituent of 'unincorporated associations' or 'body of persons' by the latter is not relevant to the present dispute. Further, the fulfilment of obligation to contribute to the capital of the joint venture is beyond the scope of taxation under Finance Act, 1994 as it does not amount to consideration. The performance of such obligations is intended to serve itself and, thereby, the joint-venture. As the demand confirmed in impugned order is not on the consideration for rendering of a service, we are not required to decide on the other issues."

22. It is an admitted fact that though an appeal has been filed before the Bombay High Court against the order dated 11.06.2020 of the Tribunal, but the said order has neither been stayed or set aside. It is also evident from the contentions urged by the Department that there is no dispute on the proposition that the Contract is an example of public private partnership in which the Government and private enterprises are in a joint venture for the purpose of achieving a common objective and sharing the profits arising from such operations. Under the Contract in question, the Central Government was to bring in its rights over the resources, while ONGC was to handle contracts and documentation, RIL was to manage financial and commercial requirements and the Appellant was vested with the responsibility of undertaking the technical operations. The man power deployed by the Appellant was in furtherance of its own interest as

also that of the joint venture and not by way of any service to unincorporated joint venture. Also, the cost incurred by the Appellant for this purpose was its capital contribution to the joint venture and it cannot be said that consideration was received by the Appellant for arranging man power.

23. It is natural that in such public private partnerships, the public enterprise generally brings in the resource over which it has exclusive rights, such as the waterfront or the right to exploit the minerals, while the private party brings in the required capital, either in monetary terms or in kind or by way of equity. The equity brought in by the co-venturer, in this case by making available man power, cannot be considered as a service rendered to the unincorporated joint venture. It is this capital contribution along with the capital contribution made by others which forms the hotchpotch of the unincorporated joint venture.

24. The Tribunal in **Mormugao Port Trust,** explained that public private partnerships between the Government/Public Enterprises and Private parties are in the nature of joint venture, where two or more parties come together to carry out a specific economic venture, and share the profits arising from such venture. Such public private partnerships are at times described as collaboration, joint venture, consortium or joint undertaking. Regardless of the name or the legal form in which the same are conducted, they are essentially in the nature of partnership with each co-venturer contributing some of the resources for the furtherance of the joint business activity. The Tribunal held that such public private partnerships meet the test laid down by the Supreme Court in **Faqir Chand Gulati** vs. **Uppal**

Agencies Pvt Ltd[15], for ascertaining whether or not the arrangement is one of joint venture. The relevant observations of the Tribunal in **Mormugao Port Trust** are reproduced below:

> "12 …….. In our view this arrangement in the nature of the joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. Such PPP arrangement are common nowadays not only in the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource over which it has the exclusive right, whether land, water front or the right to exploit the said land and water front, and the private entities brings in the required resources either capital, or technical expertise necessary for commercial exploitation of the resource belonging to the Government. These PPP arrangements are described sometimes as collaboration, joint venture, consortium, joint undertaking, but regardless of their name or the legal form in which these are conducted. These are arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of the joint business activity.
>
> …….
>
> 15. An analysis of this judgment shows that in order to constitute a joint venture, the arrangement amongst the parties should be a contractual one, the objective should be to undertake a common enterprise for profit. Joint control over strategic financial and operative decisions was held to be the key feature of a joint venture. The other obvious feature of a joint venture would be that the parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.
>
> 17 The question that arises for consideration is whether the activity undertaken by a co- venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the

---

15. 2008 (12) STR 401

> venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

25. The Civil Appeal filed by the Department **(Commissioner** vs. **Mormugao Port Trust)** against the aforesaid decision of the Tribunal was dismissed by the Supreme Court both on the ground of delay as well as on merits and the judgment is reported in **2018 (19) GSTL J 118 (SC)**.

26. There is no dispute that the joint venture in the present case has been constituted in terms of the Contract, which is a contractual arrangement between the Government of India, the Appellant, ONGC and RIL. The said joint venture was entered into for maximizing the extraction of crude petroleum/natural gas from the identified blocks and to share the profits from the venture. The management committee comprising of representatives of the Government of India, the Appellant, ONGC and RIL undertook all the strategic, financial and other operative decisions with respect to the venture. Thus, all the pre-requisites of being a joint venture are clearly met. In this backdrop, it is clearly impermissible to hold that the contribution made by a co-venturer (partner) in the course or furtherance of the joint-venture is a service rendered to the joint venture for a consideration. It is not in dispute that in a partnership or a joint venture, whatever a partner does for the furtherance of the business, he does so also for advancing his own interest, as he has a stake in the venture. All the resources contributed by the partners enter into a common pool required for running of the enterprise. There is no contractor-

contractee or principal-agent relationship between the co-venturer and the joint-venture, which is a pre-requisite for a service to be liable to tax under the Finance Act.

27. As is evident from the submissions made by the Department, the decision of the Tribunal rendered on 11.06.2020 in the Appellants case has been assailed on the grounds that:

(a) The same had relied upon another decision of the Tribunal in the case of **Cricket Club of India**, which has since been affirmed by the Supreme Court in **Calcutta Club**. However, while doing so the Supreme Court has held that the principle of mutuality would not apply to a unincorporated club or association. The PMT-JV being an unincorporated association of persons, the principle of mutuality was inapplicable for services between the JV and the co-venturer; and

(b) The same had relied upon the decision in the case of **Mormugao Port Trust**, which had been distinguished by the Tribunal in the case of **Badve Helmets Pvt. Ltd. vs. CCE**[16].

28. This contention of the Department is entirely misplaced inasmuch as the order dated 11.6.2020 of the Tribunal is not premised on the principle of mutuality. Further, the Department has assumed that merely because the unincorporated association and its members are deemed to be distinct persons, this by itself is enough to establish that a service has been provided by the Appellant to the unincorporated joint venture. This presumption is not tenable as the burden to prove that there was a rendition of service for a consideration is a sine qua non for any liability to service tax being attracted. No evidence has been led by the Department to establish this fact. On the contrary, the Tribunal in the decision rendered on

---

16. 2018 (10) GSTL 435

11.06.2020, arrived at a finding of fact to the effect that the Government of India along with the Appellant, RIL and ONGC had entered into a joint venture agreement, whereunder each co-venturer had its own set of obligations and the responsibility discharged by each of the co-venturers towards the venture was not by way of a service being rendered to the joint venture, but in their own interest, in the course or furtherance of the common objective of the joint venture.

29. It is also pertinent to note that the decision of the Tribunal in **Cricket Club of India** had been relied upon by the Tribunal not in support of the proposition that there cannot be a levy to service tax by applying the principle of mutuality, but on the point that a mere flow of money by itself is not enough to fasten a service tax liability. It is obligatory on the part of the Department to show that the said flow of money is a consideration for rendition of a service, in which case alone there can be a liability to service tax. The said burden has not been discharged in the facts of the present case. The relevant findings of the Tribunal in **Cricket Club of India,** which were relied upon by the Tribunal in the case of the Appellant, are reproduced herein below:

> "11…….. Consideration is, undoubtedly, and essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. Without an identified recipient who compensates the identified provider with appropriate consideration, a service cannot be held to have been provided. In a taxation scheme that specifies the particular targets of taxation, tax liability will arise when a provider conforming to the relevant description in the charging section performs an activity that conforms to the relevant description in the charging section on the request, and for the benefit, of a recipient conforming to the relevant description in the charging section. Service, its taxability and the provision of the taxable service to a recipient, in that order, are necessary pre-requisites to ascertaining the quantum of consideration on which ad valorem tax will be levied. This fundamental will not after in the scheme of the negative list too; a service that is clearly identifiable has to be provided or agreed

> to be provided before it can be taxed. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient."

30. The arrangement in question can also be viewed from another perspective i.e. the Appellant had entered into employment contracts on behalf of the unincorporated joint venture as the latter was incapable of entering into contracts in its own name. All activities of the unincorporated joint venture are conducted in the name of its constituent members. Unless such an activity is undertaken by a constituent member as an independent service provider for the joint venture for a consideration, there is neither a rendition of service nor can there be any liability to service tax. This position also evolves from paragraph 4.2 of the Circular dated 24.09.2014, wherein it has been clarified that a member of a joint venture may provide support services to the joint venture for a consideration either in cash or in kind, which alone would be leviable to service tax.

31. Insofar as the decision of the Tribunal in **Badve Helmets** is concerned, the same is based on entirely different facts. In that case M/s Vemmar SRL Italy, who was a equity holder had transferred know how for a consideration of US$ 1,00,000/-. The said transfer of know-how was not in the course or furtherance of the venture nor was it by way of a capital contribution. Undisputedly, M/s. Vemmar SRL was acting as a independent service provider to the joint venture and was rendering services for a consideration. The facts in the case of **Badve Helmets,** being completely different with that of **Mormagao Port Trust,** as also those in the present case, the said decision cannot be relied upon nor does the same in any manner dilute the ratio laid down

in **Mormagao**. Infact the Tribunal had in **Mormagao** specifically recorded that there can be situations were a co-venturer or a partner can render taxable service to the joint venture/firm under an independent contract between the co-venturer/partner and the joint venture/partnership and that such a contract should have been entered into in individual capacity, independent as a co-venturer, for a specific consideration.

32. Unlike in the case of **Badve Helmets,** where one of the co-ventures had entered into a separate and independent agreement with the joint venture for a specific consideration, in the facts of the present case there is no such agreement outside the scope of the joint venture that had been entered into between the Appellant and the PMT-JV. The making available of man-power was the Appellant's obligation as a co-venturer to the venture, by way of capital contribution and was not an independent service for a consideration being rendered by the Appellant to the PMT-JV.

33. It can safely be concluded that the Government of India with the Appellant, RIL and ONGC had entered into a joint venture agreement, whereunder each co-venturer had its own set of obligations and the responsibility discharged by each of the co-venturers towards the venture was not by way of any service rendered to the joint venture, but in their own interest in furtherance of the common objective of the joint venture. Service tax liability, therefore, could not have been fastened upon the Appellant.

34. In this view of the matter, it is not necessary to examine the contention of the Appellant regarding the invocation of the extended period of limitation.

35. Thus, for all the reasons stated above, the impugned order dated 31.08.2020 passed by the Commissioner cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Pronounced in open Court on **06.10.2021.**)

JUSTICE DILIP GUPTA
(PRESIDENT)

P. ANJANI KUMAR
MEMBER (TECHNICAL)

JB