2022 (64) G.S.T.L. 578 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
Justice Dilip Gupta, President and Shri P. Anjani Kumar, Member (T)

B.G. EXPLORATION & PRODUCTION INDIA LTD.
Versus
COMMISSIONER OF CGST & CX., NAVI MUMBAI

Final Order Nos. A/85002-85004/2022 in Appeal Nos. ST/86004/2019 with ST/86007/2019 & ST/86312/2020, dated 4-1-2022

ST : Activities of exploration, of petroleum by assessee as co-venturers within framework of a 'joint venture' among Government and private companies including assessee under Production Sharing Contract cannot be considered as rendition of service to Government of India and 'Cost Petroleum' and 'Profit Petroleum' shared among co-venturers could not be treated as consideration flowing from Government of India making it liable to Service Tax

Mining services - Exploration, development and production of petroleum within territorial waters/continental shelf of India by a Joint Venture set up under a public-private partnership among Government of India and different private companies including appellant-assessee under a Production Sharing Contract - 'Cost Petroleum' viz. petroleum initially produced and used by private companies/assessee to recover expenses incurred by them and 'Profit Petroleum' viz. all petroleum as reduced by "Cost Petroleum" and shared amongst parties to contract i.e. Government of India and private companies/assessee in proportion prescribed under said contract whether to be treated as 'consideration' for rendering Mining services to Government of India during period April, 2011 to June, 2017 - Keeping in view earlier decision of Tribunal in assessee's own case as reported in 2021 (10) TMI 306-CESTAT (Mum), 'Cost Petroleum' and 'Profit Petroleum' were inherent and embedded part of Production Sharing Contract and same could not be treated as consideration flowing from Government of India to assessee for activities rendered by them - Therefore, aforesaid activities as co-venturers within framework of a 'joint venture' could not be considered as rendition of service to Government of India and these were not liable to Service Tax - Section 65(105)(zzzy) of Finance Act, 1994. *[paras 19 to 42]*

Appeals allowed in favour of assessee

CASES CITED

B.G. Exploration & Production India Ltd. v. Commissioner — 2021 (49) G.S.T.L. 143 (Tribunal) — **Noted** [Paras 13, 17, 33, 35]
B.G. Exploration Production India Ltd. v. Commissioner — 2022 (63) G.S.T.L. 351 (Tribunal) — *Relied on* [Paras 13, 33, 34, 35, 38]
Commissioner v. Mormugao Port Trust — 2018 (19) G.S.T.L. J118 (S.C.) — **Noted**..... [Para 15]
Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. — 2008 (12) S.T.R. 401 (S.C.) — *Relied on* [Paras 16, 33]
Mormugao Port Trust v. Commissioner — 2017 (48) S.T.R. 69 (Tribunal) — *Relied on* [Paras 14, 33]
State of West Bengal v. Calcutta Club Limited — 2019 (29) G.S.T.L. 545 (S.C.) — *Referred* [Para 17]

DEPARTMENTAL CLARIFICATIONS CITED

C.B.E. & C. Circular No. 179/5/2014-S.T., dated 24-9-2014..... [Paras 16, 39]
C.B.I. & C. Circular No. 32/06/2018-GST, dated 12-2-2018..... [Paras 16, 36, 39]

REPRESENTED BY : S/Shri Rohan Shah, Senior Advocate and Vipin Kumar Jain, Advocate, for the Appellant.
Shri S.K. Mathur, Special Counsel, for the Respondent.

[Order per : Justice Dilip Gupta, President]. - ***Service Tax Appeal No. 86004 of 2019 and Service Tax Appeal No. 86007 of 2019*** have been filed by B.G. Exploration and Production India Ltd. [the appellant] (formerly known as Enron Oil and Gas India Ltd.) to assail the common order dated 31-12-2018 passed by the Commissioner, CGST and CX, Navi Mumbai [the Commissioner] adjudicating the two show cause notices dated 15-12-2016 and 17-7-2017 issued for the period 2011-12 to 2013-14 and 2014-15 to 2015-16 respectively. The issue involved in these appeals is whether entitlement towards "*Cost Petroleum*" under the "*Production Sharing Contract*" can be treated as "consideration" for rendering "*mining services*" to the Government of India. The Commissioner, by the impugned order, has confirmed the demand of service tax with interest and penalty.

2. ***Service Tax Appeal No. 86312 of 2020*** has been filed to assail the order dated 31-8-2020 that adjudicates the

show cause notice dated 5-7-2019 issued for the period April, 2016 to June, 2017. The issue involved in this appeal is whether entitlement towards to "*Cost Petroleum*" and *Profit Petroleum* under the "*Production Sharing Contract*" can be treated as the consideration for rendering "*mining services*" to the Government of India. The impugned order confirms the demand of service tax with interest and penalty.

3. The details of the proceedings and the issues under consideration are enumerated in the following Tabular Chart :-

Appeal No.	Period of Dispute	Show Cause Notice date	Issue	Order-in-Original	Demand	Barred under the longer period of limitation	Proceedings initiated under
86004/2019	2011-12 to 2013-14	15 December, 2016	Whether the entitlement towards "*Cost Petroleum*" under the "*Production Sharing Contract*" be treated as the "consideration" for rendering "*Mining services*" to the Government of India?	31 December, 2018	Rs. 929.53 crores	Rs. 929.53 crores	Proviso to section 73 (1) of Finance Act.
86007/2019	2014-15 to 2015-16	17 April, 2017		31 December, 2018	Rs. 676.56 crores	-	Section 73 (1A) of Finance Act
86312/2020	April, 2016 to June, 2017	5 July, 2019	Whether the entitlement towards "*Cost Petroleum*" and "*Profit Petroleum*" under the "*Production Sharing Contract*" be treated as the "consideration" for rendering "*Mining services*" to the Government of India?	31 August, 2020	Rs. 702.58 crores	-	Section 73 (1A) of Finance Act

4. 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).

5. 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.

6. The contracts can be broadly divided into three phases, namely (i) Exploration Phase; (ii) Development Phase and (iii) Production Phase. They are described below :

(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.

7. 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 contracts [the Contracts] with Enron Oil and Gas India Ltd. (now the appellant), Reliance Industries Ltd. [RIL] and Oil and Natural Gas Corporation Ltd. [ONGC] for the discovery and exploitation of petroleum resources in 'Panna and Mukta' and 'Mid and South Tapti' fields [the Contract Areas]. 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 [Agreement] 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 be 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.

8. On 14-2-2002 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 19-1-2005, 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.

9. 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.

10. 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 *i.e. Cost Petroleum* and then the excess share is the profit, known as "*Profit Petroleum*" 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.

11. The ability of the Contractor to recover any costs so incurred for the Petroleum Operations is dependent on the existence of "Cost Petroleum". Thus, 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.

12. The issue arising in all the three appeals relates to the Production Sharing Contract dated 22-12-1994 and the cause of action, as can be culled out from the show cause notice, is as follows :

(i) The transaction between the appellant (on behalf of all the three Holders *i.e.*, the appellant RIL and ONGC) and the Government of India are on principal-to-principal basis. The appellant (on behalf of the Holders) and the Government of India are two separate and distinct juridical persons, with the former acting as the service provider and the latter acting as the service recipient;

(ii) The appellant (on behalf of the Holders) is providing "*mining services*" (*i.e.*, development of exploration and production of crude oil, gas and condensate) to the Government of India;

(iii) The recovery of cost of service *i.e.* "*Cost Petroleum*" from the Government of India represents the consideration for providing "*mining services*"; and

(iv) In the show cause notice dated 5-7-2019, it is also alleged that the recovery of "*Cost Petroleum*" and "*Profit Petroleum*" represents consideration received by the appellant for providing "*mining service*" to the Government of India.

13. According to the appellant the issues involved in these appeals have been decided in favour of the appellant in two separate orders of the Tribunal and the details are as follows :

(A) *BG Exploration Production India Limited* v. *Commissioner of Service Tax (Audit-I)* [2021 (10) TMI 306-CESTAT (Mum) = 2022 (63) G.S.T.L. 351 (Tri. - Mum.)]. The relevant portion of the order is reproduced below :

"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."

(B) *BG Exploration & Production India Limited* v. *Commissioner of CGST* [2020 (10) TMI 579-CESTAT (Mum) = 2021 (49) G.S.T.L. 143 (Tri. - Mumbai)]. The relevant portion of the order is reproduced below :

15. …… 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…….

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."

14. It needs to be noted that both the aforesaid decisions of the Tribunal refer to and relay upon an earlier decision of the Tribunal in *Mormugao Port Trust* v. *Commissioner of Customs, Excise & Service Tax* [2017 (48) STR 69 (Tri. - Mum.)]. 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.

xx xx xx

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 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.

15. The Civil Appeal filed by the Department (*Commissioner* v. *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) G.S.T.L. J118 (S.C.).

16. Shri Rohan Shah, Learned Senior Counsel assisted by Shri Vipin Kumar Jain, appearing for the appellant made the following submissions :

(i) The commercial nature of the transaction under the Production Sharing Contract dated 22-12-1994 between the Government of India, ONGC, RIL and the appellant is a joint venture and involves no rendition of service. The contractors have undertaken to make available necessary financial and technical resources and technical and industrial competence and experience necessary for proper discharge and/or performance of all obligations required to be performed under this contract. Thus, under the Production Sharing Contract, there is a community of interest between the Government, and the Contractors to discover, produce and share the "Profit Petroleum" and, for this reason, the contract is entered into between the Government of India and the contractors, for carrying

out Petroleum Operations on land and resources owned by Government of India. In this connection reliance has been placed on the judgment of the Supreme Court in *Faqir Chand Gulati* v. *Uppal Agencies Pvt. Ltd.* [2008 (12) S.T.R. 401];

(ii) The activities undertaken by the co-venturers within the framework of a "joint venture" cannot be considered as rendition of "service", liable to service tax;

(iii) The appellant has not received any "*consideration*" under the Production Sharing Contract;

(iv) Under the Production Sharing Contract, co-venturers act at their own risk;

(v) "*Cost Petroleum*" or "*Profit Petroleum*" does not flow from the Government of India to the appellant;

(vi) The components of "*Cost Petroleum*" and "*Profit Petroleum*" are inherent and embedded part of the Production Sharing Contract. Consequently, such components cannot be treated as "*consideration*" for the "*services rendered*" by the appellant;

(vii) The Circular dated February 12, 2018 clarifies that the Holders carry out the operations under the Production Sharing Contract on their own account;

(viii) The Circular dated September 24, 2014 is inapplicable to the present case;

(ix) The show cause notice dated December 15, 2016 is barred by limitation;

(x) Interest is not leviable under Section 75 of the Finance Act; and

(xi) No penalty under Sections 76, 77 and 78 of the Finance Act, could have been imposed on the appellant.

17. Shri S.K. Mathur, Learned Authorised Representative appearing for the Department made the following submissions :

(i) The activity of the appellant of doing "*mining services*" for consideration to the Joint Venture, which is not an Incorporated Association of persons, from the common pool lies within the ambit of service tax applicability.

(ii) The Joint Venture Committee is a body of companies and the appellant is one of the constituent member providing "*mining services*" for consideration received from the common pool of fund of the Joint Venture and ultimately reimbursed by the beneficiary Government of India as Cost Petroleum to the Joint Venture Companies and, therefore, satisfies the criteria of applicability of service tax;

(iii) The activities of the Joint Venture Companies is in the interest of the Government as the three Companies have no field of their own but the fields belong to the Government of India, for which the work has been carried out;

(iv) In connection with the Final Order dated 11-6-2020 passed by the Tribunal in Service Tax Appeal No. 87085 of 2017, the department has preferred an appeal before the Bombay High Court; and

(v) The Supreme Court in *State of West Bengal* v. *Calcutta Club Limited* [2019 (29) G.S.T.L. 545 (S.C.)] has clearly held that the doctrine of mutuality continues to be applicable to incorporated and unincorporated members club after the 46th Amendment to the Constitution by adding Article 366(29A) to the Constitution of India. Thus, the PMT-JV and the appellant have to be treated as distinct persons and the appellant has rendered service for consideration and hence liable for payment of service tax.

18. The submissions advanced by the Learned Senior Counsel for the appellant and the Learned Special Counsel for the Department have been considered.

19. The issue that arises for consideration in these appeals is whether the entitlement towards "*Cost Petroleum*" and "*Profit Petroleum*" under the "*Production Sharing Contract*" can be treated as the "*consideration*" for rendering "*mining services*" to the Government of India.

20. Section 65B of the Finance Act that was inserted w.e.f. 1-7-2012 deals with 'Interpretations' and sub-section (44) of Section 65B that defines 'service' is as follows :

> **"Section 65B(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
>
> (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."

21. Explanation 3(a) deals with unincorporated association and 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;
>
> xx xx xx

22. The show cause notice, after referring to the Production Sharing Contract dated 22-12-1994, mentions that the transaction between the Government of India and the appellant are on principal-to-principal basis in view of the Article 7 of the said contract and, therefore, the appellant and the Government of India are two separate and distinct juridical persons; the

appellant provides "*mining services*" which are received by the Government of India; and the appellant recovers the cost of service from the Government of India by way of deduction from account/book adjustment at the time of profit sharing. It, therefore, proposes that the appellant should have paid service tax on such "*mining services*" on the aforesaid consideration received by the appellant.

23. According to the appellant, the commercial nature of the transaction under the Production Sharing Contract dated 22-12-1994 between the Government of India, ONGC, RIL and the appellant is a joint venture and the activities undertaken by the co-venturers within the framework of a "joint venture" cannot be considered as rendition of "service", liable to service tax. The appellant also contends that the components of "*Cost Petroleum*" and "*Profit Petroleum*" are inherent and embedded part of the Production Sharing Contract and consequently, such components cannot be treated as "*consideration*" for the "*services rendered*" by the appellant.

24. To appreciate the contentions raised on behalf of the appellant and the Department, it would be useful to reproduce the relevant clauses of the Production Sharing Contract between the Government of India, ONGC, RIL and the appellant and they are as follows :-

ARTICLE 1

Definitions

1.21 "Contract Costs" means Exploration Costs, Development Costs, Production costs, and all other costs related to Petroleum Operations as set forth in Section 3 of the Accounting Procedure.

xx xx xx

1.24 "Cost Petroleum" means the portion of the total volume of Petroleum produced and saved from the Contract Area which the Contractor is entitled to take from the Contract Area in a particular period for the recovery of Contract Costs as provided in Article 13.

xx xx xx

1.29 "Development Costs" means those costs and expenditures incurred in carrying out Development Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof.

xx xx xx

1.40 "Exploration Costs" means those costs and expenditures incurred in carrying out Exploration Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof.

xx xx xx

1.67 "Production Costs" means those costs and expenditures incurred in carrying out Production Operations as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof.

xx xx xx

1.69 "Profit Petroleum" means all Petroleum produced and saved from the Contract Area in a particular period as reduced by Cost Petroleum and calculated as provided in Article 14.

ARTICLE 13

Recovery of Costs

13.1 The Contractor shall be entitled to recover Contract Costs out of the total volume of Petroleum produced and saved from the Contract Area in each Financial Year in accordance with the provisions of this Article, and, in respect of sole risk or exclusive operations, Article VII of the Operating Agreement.

13.1.1 Development Costs incurred by the Contractor in the Contract Area shall be aggregated, and the Contractor shall be entitled to recover out of Cost Petroleum the aggregate of such Development Costs at the rate of one hundred per cent (100%) per annum, provided, however, that, subject to the remaining provisions of this Article 13.1, the Contractor shall not, for the purposes only of determining the volume of Petroleum to which Contractor shall be entitled under Article 13.1 as Cost Petroleum, claim as Contract Costs Contractor's Development Costs incurred after the Effective Date in connection with Development Operations under the Development Plan for Panna and Mukta Fields (as those Fields are determined in the Development Plan first approved by the Management Committee) which exceed Contractor's Cost Recovery Limit (as hereinafter defined).

13.1.2 For the purposes of this Article 13.1, Contractor's "Cost Recovery Limit" means costs incurred after the Effective Date relating to the construction and/or establishment of such facilities as are necessary to produce, process, store and transport Petroleum from within the Existing Discoveries, in order to enable oil production of thirty-eight thousand three hundred barrels per day (38,300 BOPD) in accordance with the Development Plan for the Panna and Mukta Fields. Such costs shall include costs incurred in relation to those items illustrated in Appendix G and matters in connection therewith. Appendix G, Annex G-1, further describes companies' development concept based on an assumed project start date of 1st July, 1993, and Parties understand and agree that the schedules and activities contained in such assessment shall be revised, subject to Management Committee approval, by the Contractor in Contractor's Development Plan first submitted pursuant to this Contract.

The Parties agree that for the purposes of this Article 13.1 the Contractor's Cost Recovery Limit shall be the sum of Five Hundred Seventy-seven Million Five Hundred Thousand U.S. Dollars (U $ 577,500,000).

xx xx xx

13.2 Exploration Costs (if any) incurred by the Contractor in respect of the Contract Area up to the date of Commercial Productions of Petroleum from the Contract Area shall be aggregated, and the Contractor shall be entitled to recover the aggregated of such Exploration Costs out of the Cost Petroleum from the Contract Area at the rate of one hundred per cent (100%) per annum of such Exploration Costs beginning from the date of such Commercial Production.

xx xx xx

13.4 The Contractor shall be entitled to recover Exploration Costs as provided in Articles 13.2 and 13.3 in relation to the values of the quantity of Petroleum produced, saved and sold from the Contract Area, in the relevant year, provided that such Exploration Costs once recovered shall not be allowable for recovery against any other contract area.

13.5 Development Costs incurred by the Contractor in the Contract Area up to the date of Commercial Production

from the Contract Area shall be aggregated, and the Contractor shall be entitled to recover out of the Cost Petroleum from that Contract Area the aggregate of such Development Costs at the rate of one hundred per cent (100%) per annum of such Development Costs beginning from the date of such Commercial Production from the Contract Area.

13.6 The Contractor shall be entitled to recover out of the Cost Petroleum produced from the Contract Area the Development Costs which it has incurred on such Contract Area after the date of Commercial Production from the Contract Area at the rate of one hundred per cent (100%) per annum of such Development Costs beginning from the date such Development Costs are incurred.

13.7 The Contractor shall be entitled to recover in full during any Financial Year the Production Costs incurred in the Contract Area out of the Cost Petroleum.

13.8 If during any Financial Year the Cost Petroleum is not sufficient to enable the Contractor to recover in full the Contract Costs due for recovery in that Financial Year in accordance with the provisions of Articles 13.1 through 13.7, then, subject to the provisions of Article 13.1.

(a) recovery shall first be made of the Production Costs; and

(b) recovery shall next be made of the Exploration Costs; and

(c) recovery shall then be made of the Development Costs.

The unrecovered portions of Contract Costs shall be carried forward to the following Financial Year and the Contractor shall be entitled to recover such Costs in such Financial Year or the subsequent Financial Years as if such costs were due for recovery in that Financial Year, or the succeeding Financial Years, until the unrecovered costs have been fully recovered out of Cost Petroleum from the Contract Area.

ARTICLE 14

Production Sharing of Petroleum Between Contractor and Government

14.1 The Contractor and the Government shall share in the Profit Petroleum from the Contract Area in accordance with the provisions of this Article. The share of Profit Petroleum, in any Financial Year, shall be calculated for the Contract Area on the basis of the Investment Multiple actually achieved by the Companies at the end of the preceding Financial Year for the Contract Area as provided in Appendix D.

14.2 Profit Petroleum

14.2.1 When the Investment Multiple of the Companies at the end of any Financial Year is less than two (2.0), the Government shall be entitled to take and receive five per cent (5%) and the Contractor shall be entitled to take and receive ninety-five per cent (95%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Financial Year.

14.2.2 When the Investment Multiple of the Companies at the end of any Financial Year in respect of any Contract Area is equal to or more than two (2.0) but is less than two and one-half (2.5), the Government shall be entitled to take and receive fifteen per cent (15%) and the Contractor shall be entitled to take and receive eighty-five per cent (85%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Financial Year.

14.2.3 When the Investment Multiple of the Companies at the end of any Financial Year in respect of the Contract Area is equal to or more than two and one-half (2.5) but is less than three (3.0), the Government shall be entitled to take and receive twenty-five percent (25%) and the Contractor shall be entitled to take and receive seventy-five percent (75%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Financial Year.

14.2.4 When the Investment Multiple of the Companies at the end of any Financial Year in respect of the Contract Area is equal to or more than three (3.0) but is less than three and one-half (3.5), the Government shall be entitled to take and receive forty per cent (40%) and the Contractor shall be entitled to take and receive sixty per cent (60%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Financial Year.

14.2.4 When the Investment Multiple of the Companies at the end of any Financial Year in respect of the Contract Area is equal to or more than three and one-half (3.5), the Government shall be entitled to take and receive fifty per cent (50%) and the Contractor shall be entitled to take and receive fifty per cent (50%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Financial Year.

ARTICLE 27

Title to Petroleum, Data and Assets

27.1 The Government is the sole owner of Petroleum underlying the Contract Area and shall remain the sole owner of Petroleum produced pursuant to the provisions of this Contract except that part of Crude Oil or Gas the title whereof has passed to each constituent of the Contractor or any other person in accordance with the provisions of this Contract.

25. It would also be useful to refer to the Accounting Procedure contained in Appendix C to the Production Sharing Contract. The relevant sections are as follows :

SECTION 2

Classification, Definition and Allocation of Costs and Expenditures

2.2 Exploration Costs

Exploration Costs are all direct and allocated indirect expenditures incurred in the search for Petroleum in an area which is, or was at the time when such costs were incurred, part of the Contract Area, including expenditures incurred in respect of :

xx xx xx

2.2.2 Core hole drilling and water well drilling.

2.2.3 Labour, materials, supplies and services used in drilling Wells with the object of finding Petroleum or in drilling Appraisal Wells provided that if such Wells are completed as producing Wells, the costs of completion thereof shall be classified as Development Costs.

xx xx xx

2.2.5 Any Service Costs and General and Administrative Costs directly incurred on exploration activities and identifiable as such and a portion of the remaining Service Costs and General and Administrative Costs allocated to Exploration Operations determined by the proportionate share of total Contract Costs (excluding General and Administrative Costs and Service Costs) represented by all other Exploration Costs.

xx xx xx

2.2.7 Any other expenditure incurred in the search for Petroleum not covered under Section 2.3 or 2.4.

2.3 Development Costs

Development Costs are all direct and allocated indirect expenditures incurred with respect to the development of the Contract Area including expenditures incurred on account of :

xx xx xx

2.4 Production Costs

2.4.1 Production Costs are expenditures incurred on Production Operations in respect of the Contract Area after the start of production from the Field (which are other than Exploration and Development Costs). The balance of General and Administrative Costs and Service Costs not allocated to Exploration Costs or Development Costs shall be allocated to Production Costs.

xx xx xx

2.6 General and Administrative Costs

General and Administrative Costs are expenditures incurred on general administration and management primarily and principally related to Petroleum Operations in or in connection with the Contract Area, and shall include.

xx xx xx

SECTION 3

Costs, Expenses, Expenditures and Incidental Income of the Contractor

3.1 Costs Recoverable and Allowable without further Approval of the Government.

Costs incurred by the Contractor on Petroleum Operations pursuant to the Contract as classified under the headings referred to in Section 2 shall be allowable for the purposes of the Contract except to the extent provided in Section 3.2 or elsewhere in this Accounting Procedure, and subject to audit as provided for herein.

3.1.1 Surface Rights

3.1.2 Labour and Associated Costs

3.1.3 Transportation Costs

3.1.4 Charges for Services

3.1.5 Communications

3.1.6 Office; Shore Bases and Miscellaneous Facilities

3.1.7 Environmental Studies and Protection

3.1.8 Materials and Equipment

3.1.9 Duties, Fees and Other Charges

3.1.10 Insurance and Losses

26. It would be seen from the aforesaid terms of the Production Sharing Contract that it deals with both "*Cost Petroleum*" and "*Profit Petroleum*".

27. In so far as "*Cost Petroleum*" is concerned, *Contract Costs* means Exploration Costs, Development Costs, Production Costs, and all other costs related to Petroleum Operations as set out in Section 3 of the Accounting Procedure. *Development Costs* means those costs and expenditures incurred in carrying out Development Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof. *Exploration Costs* means those costs and expenditures incurred in carrying out Exploration Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof. *Production Costs* means those costs and expenditures incurred in carrying out Production Operations as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of Section 3 thereof. "*Cost Petroleum*" means the portion of the total volume of Petroleum produced and saved from the Contract Area which the Contractor is entitled to take from the Contract Area in a particular period for the recovery of Contract Costs as provided in Article 13.

28. *Article 7.1(a)* provides that the Contractor shall have the right to recover costs and expenses as provided in this Contract. *Article 7.3(a)* stipulates that the Contractor shall conduct all Petroleum Operations at its sole risk, cost and expense and provide all funds necessary for the conduct of Petroleum Operations. *Articles 13.1 to 13.5* states that the Contractor shall be entitled to recover Contract Costs namely Development Costs, Exploration Costs and Development Costs. *Article 13.8* provides the manner of recovery of Contract Costs where the "Cost Petroleum" is insufficient to enable the Contractor to recover the Contract Costs.

29. In so far as *Profit Petroleum* is concerned, "*Profit Petroleum*" means all Petroleum produced and saved from the Contract Area in a particular period as reduced by "Cost Petroleum" and calculated as provided in Article 14.

30. *Article 14* read with Appendix D states that the Government of India and the Contractor will share "*Profit Petroleum*" in accordance with following pre-defined percentages/Investment Multiple.

Sr. No.	Investment Multiple	Government of India Share of "Profit Petroleum"	Contractor Share of "Profit Petroleum"
1.	Less than 2	5%	95%
2.	Between 2.0-2.5	15%	85%

3.	Between 2.5-3.0	25%	75%
4.	Between 3.0-3.5	40%	60%
5.	More than 3.5	50%	50%

31. The Order dated 31-12-2018 makes reference to an illustrative calculation of the recovery of "Cost Petroleum" and "Profit Petroleum" by the Contractors pursuant to the Production Sharing Contract, basis the reports filed for the quarter and year ending 31 March, 2014 with the Director General of Hydrocarbon. This illustrative calculation which exemplifies the method of calculation of "Cost Petroleum" and "Profit Petroleum" is reproduced below :

Description	Amount in USD	
Revenue from sale of Crude Oil and Natural Gas from Panna Mukta Contract Area from FY 2013-14	1,181,042,280	
Total Revenue	**1,181,042,280**	
Costs including Development, Exploratory Drilling, Production facilities, EPOD, Operating Costs, Administrative Costs, Royalty and Cess.		
Contract Costs from April 1, 2013 to June 30, 2013	123,448,753	
Contract Costs from July 1, 2013 to September 30, 2013	123,846,146	
Contract Costs from October 1, 2013 to December 31, 2013	86,398,685	
Contract Costs from January 1, 2014 to March 31, 2014	109,322,029	
Total Costs (Cost Oil)	443,015,613	
Profit Oil	744,306,729	
Government of India's share of Profit Petroleum	186,076,682	25%
Government Profit's share as a percentage of Actual Revenue		15.76%

Share	BG Exploration	RIL	ONGC
Share of Profit Oil	30% of the remaining Profit Oil after GOI's share	30% of the remaining Profit Oil after GOI's share	40% of the remaining Profit Oil after GOI's share
Share of Cost Oil	30% of the Cost Oil of 443,015,613	30% of the Cost Oil of 443,015,613	40% of the Cost Oil of 443,015,613

32. The contention of the appellant is that from a conjoint reading of the various clauses of the Production Sharing Contract, the true commercial nature of the transaction between the Government of India, the appellant, RIL and ONGC is a Joint Venture and involves no rendition of service.

33. This precise issue was examined at length by the Division Bench of the Tribunal in the decision rendered by the Tribunal on 6-10-2021, in the case of the appellant itself, which decision is reported in 2021 (10) TMI 306-CESTAT (Mum). The Tribunal, after referring to the earlier decision of the Tribunal rendered on 11-6-2020 in the case of the appellant, which decision is reported in 2020 (10) TMI 579-CESTAT (Mum), the decision of the Tribunal in *Mormugao Port Trust* and the decision of the Supreme Court in *Faqir Chand Gulati* and after noticing that an appeal had been filed by the Department in the Bombay High Court against the decision of the Tribunal rendered on 11-6-2020, observed 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. The paragraphs of the decision relevant for the purpose this order are as follows :

> "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 11-6-2020* in the case of the Appellant. xx xx xx
>
> 22. It is an admitted fact that though an appeal has been filed before the Bombay High Court against the order dated 11-6-2020 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* v. *Uppal Agencies Pvt. Ltd.*, for ascertaining whether or not the arrangement is one of joint venture.

25. The Civil Appeal filed by the Department (*Commissioner* v. *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) G.S.T.L. J118 (S.C.).

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 11-6-2020 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.* v. *CCE* [2018 (10) G.S.T.L. 435].

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 11-6-2020, 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 24-9-2014, 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*. In fact the Tribunal had in *Mormagao* specifically recorded that there can be situations where 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."*

(Emphasis supplied)

34. The issues raised in this appeal are covered by the aforesaid earlier decision of the Tribunal rendered on 6-10-2021.

35. The submissions advanced by the Learned Special Counsel appearing for the Department in connection with the filing of the appeal before the Bombay High Court in the matter decided by the Tribunal on 11-6-2020 have been considered and repelled by the Tribunal in the subsequent decision rendered on 6-10-2021. It would, therefore, not be necessary to deal with the submissions again in this order.

36. From the provisions of the Production Sharing Contract it is clear that Cost Petroleum and Profit Petroleum cannot be said to be consideration flowing from the Government of India to the appellant and that the components of "*Cost Petroleum*" and "*Profit Petroleum*" are inherent and embedded part of the Production Sharing Contract. Consequently, such components cannot be treated as "*consideration*" for the "services rendered" by the appellant.

37. Learned Senior Counsel appearing for the appellant placed reliance upon the Circular dated 12-2-2018. The relevant extract of the said Circular is reproduced below :

Sl. No.	Issue	Clarification
6.	Appropriate clarification may be issued regarding taxability of Cost Petroleum	As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". *The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee* in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, *contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government.* Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. *The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se.* However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture. (Emphasis supplied)

38. A perusal of the aforesaid Circular reveals that Contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government of India and "Cost Petroleum" is not a consideration for service to Government of India and thus not taxable *per se*. It is, therefore, more than apparent that the aforesaid Circular only confirms the view taken by the Tribunal in the decision rendered on 6-10-2021.

39. The Circular dated 24-9-2014, on which reliance has been placed by the Learned Special Counsel appearing for the Department, is not applicable to the facts of the present case. It needs to be noted that the said Circular is generically in relation to Joint Ventures. The subsequent Circular dated 12-2-2018 is specifically on the issue involved in the present case, namely taxability of "*Cost Petroleum*" in relation to a Production Sharing Contract.

40. It is, therefore, not possible to sustain the order dated 31-12-2018, which has been assailed in Service Tax Appeal

No. 86004 of 2019 and Service Tax Appeal No. 86007 of 2019, as also the order dated 31-8-2020 that has been assailed in Service Tax Appeal No. 86312 of 2020.

41. It would, therefore, not be necessary to examine the issue relating to the applicability of the extended period of limitation.

42. Thus, for all the reasons stated above, the impugned orders dated 31-12-2018 and 31-8-2020 passed by the Commissioner are set aside and the appeals are allowed.

(Pronounced in open Court on *4-1-2022*)

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