IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.683 of 2012

[Arising out of Order-in-Original No.27/2012 dated 13.09.2012 passed by Commissioner of Central Excise, Chennai I Commissioerate]

M/s. Aban Infrastructure Pvt. Ltd. **: Appellant**
Janpriya Crest, 113, Pantheon Road,
Egmore
Chennai 600 008.

VERSUS

The Commissioner of GST & Central Excise, **: Respondent**
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam,
Chennai 600 034.

APPEARANCE:

Ms. Radhika Chandrasekar, Advocate
Ms. P. Saravanaselvi, Advocate
For the Appellant

Shri M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40093 / 2023

DATE OF HEARING: 16.02.2023

DATE OF PRONOUNCEMENT:28.02.2023

Per: Ms. SULEKHA BEEVI C.S.

Brief facts of the case are that the appellant is engaged in Management, Maintenance and Repair services (MMR) and Renting of Immovable Property Service (RIP). The appellants are registered with Service Tax Commissionerate. During the course of verification of their

accounts, it was noticed that the appellant had undertaken repairs / maintenance of rig/drill ships. They had received work orders from M/s.Western India Shipyard Ltd., Goa, and M/s.BST Management Services Ltd., Chennai for carrying out the repair works on a drill ship named 'Aban Ice' belonging to their group concern namely Aban Offshore Ltd. The appellant had raised invoices on their client during the period 2006-07 to 2008-09. They had not discharged service tax on the amounts received for carrying out repair works for the reason that the services have been provided in the non-designated areas and therefore the provisions of Chapter V of the Finance Act, 1994 do not apply. Show cause notice was issued proposing to demand service tax on such amounts received by them, along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Hence this appeal.

2. Ld. Counsel Ms. Radhika Chandrasekar and Ms. P. Saravana Selvi appeared and argued for the appellant.

3. The Ld. Counsel submitted that the services were rendered as per the work orders placed by M/s.BST Management Services Ltd., Chennai and M/s.Western India Shipyard Ltd., Goa. The appellant had carried out these services in a non-designated area. Since the provisions of Chapter V of the Finance Act, 1994 were extended only in designated area in the continental shelf and exclusive economic zone of India vide Notification No.1/2002 dated 01.03.2002, the appellant is not liable to

pay the service tax. The Department has demanded service tax alleging that appellant has received work orders from M/s.BST Management Services, Chennai and M/s.Western India Ship Ltd., Goa which are situated in India. Further that services were provided by one Indian company to another Indian company and that the consideration has been received in Indian rupees. The department has raised the demand by concluding that the activity does not amount to 'export of services'. The appellant has filed detailed reply stating that the maintenance and repair works on rigs/drill ships was carried out outside the territorial application of the Finance Act, 1994 and therefore, the appellant is not liable to pay service tax. The fact that the services were performed in the non-designated area is admitted and accepted in para 3.4 and 3.5 of the SCN as well as in the OIO. The period involved being from February 2007 to July 2008 which is prior to the amendment to Notification No.1/2002 i.e. 07.07.2009, the appellant is not liable to pay service tax for the activities carried out in the non-designated area. Further, the ONGC vide their letter dated 11.06.2009 has confirmed that the drill ship 'Aban Ice' was deployed on 10 Exploratory locations during the period from 11.03.2005 to 30.06.2009 and that all these drilling locations fall in the non-designated area.

4. Ld. Counsel relied upon the decision in the case of *Greatship (India) Ltd. Vs CST Mumbai-I* - 2015 (39) STR 754 (Bom.) and in the case of *CGG Veritas Services Ltd. Vs CST., Mumbai* - 2015 (38) STR 1139 (Tri.-Mumbai) to argue that the demand of service tax cannot sustain

when services are rendered in a non-designated area prior to 07.07.2009.

5. Ld. Counsel argued on the ground of limitation also. The exchange of communications between the appellant and the department was relied to argue that the SCN is time barred. The Ld. counsel submitted that on 19.09.2008 the Department sought for details of invoices and balance sheet with regard to the amounts received by the appellant. All the details were furnished. However, show cause notice is issued after much delay only on 07.04.2010. Though the Department has alleged that appellant has suppressed facts with intention to evade payment of tax, there is no evidence to establish this allegation. The appellant has furnished all details as requested by the department and has not suppressed facts. Also the issue being interpretational in nature, the extended period cannot be invoked. She prayed that the appeal may be allowed.

6. Ld. A.R appeared for the Department and supported the findings in the impugned order. He submitted that since the repair works have been done by one Indian company to another Indian company and the amounts having been received in Indian currency the activity will not fall under the 'export of services' and the appellant is liable to pay service tax.

7. Heard both sides.

8. The demand is raised on the consideration received for repair works done by the appellant on the rig / drill ship. The Department has proceeded to analyse whether the activity would fall under export of services or not. The defence taken by the appellant is that the services were rendered in a non-designated area and therefore they are not liable to service tax . Notification No.1/2002-ST dated 1.3.2002 reads as under :

> **"Service Tax — Extension of provisions of Chapter V of the Finance Act (32 of 1994) to the designated areas in the continental shelf and exclusive economic zone of India**
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> In exercise of the powers conferred by clause (a) of sub-section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the provisions Chapter V of the Finance Act (32 of 1994) to the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the Notifications of the Government of India in the Ministry of External Affairs Nos. S. O. 429 (E) dated the 18th July 1986 and S.O. 643 (E), dated the 19th September, 1996 with immediate effect.
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> [***Notification No. 1/2002-Service Tax, dated 1-3-2002***]"

9. It is clear from the above that the provisions of Chapter V of Finance Act, 1994 applies only to designated areas in the continental shelf and exclusive economic zone of India. It is clear from the SCN as well as the OIO that the repair works were performed in the non-designated area of continental shelfs and exclusive economic zone. The provisions of Chapter V of the Finance Act, 1994 can only apply to the areas to which the Act is specifically extended. Therefore when the drill ship is located in an area which is outside the territorial purview of the

Finance Act, 1994, there is no question of payment of service tax in respect of the maintenance and repair works carried out by the appellant on rig/drill ship.

10. Similar issue was discussed in the case of *Greatship (India) Ltd.* (supra). The relevant paras of the said decision are reproduced as under :

> **"2.** The facts which are not in much dispute are as under :-
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> (a) The appellant had entered into two contracts with M/s. Oil and Natural Gas Corporation Limited (ONGC) for supply of Cantilever type jack-up rigs named, Greatdrill Chetna and Greatdrill Chitra. They were required to provide offshore drilling services to ONGC in terms of the contract dated 27-2-2009 and 8-5-2009. These rigs were hired by the appellant from M/s. Greatship Global Energy Services Pte. Ltd., Singaporte, on bareboat charter basis. As per the contract, the appellant was required to provide the drilling rig, equipment and crew for drilling operations as specified by ONGC in the Continental Shelf and Exclusive Economic Zone of India. These drilling activities were undertaken in open locations. Though it appears that the appellant in the original proceedings as well as before the learned Tribunal had raised an issue regarding classification of services, however, in the present appeal, the appellant has also not disputed that the services in question are covered by "Supply of Tangible Goods for use" as has been defined under Section 65(105)(zzzzj) of Chapter V of the Finance Act, 1994 (hereinafter referred to as "the said Act"). It is also not in dispute that the appellant has discharged the Service Tax liability in respect of services rendered by it to the installations, structures and vessels in the Continental Shelf of India and Exclusive Economic Zone of India for the period between 7-7-2009 and 27-2-2010. The only dispute is as to whether during the aforesaid period, the appellant was also liable to pay the Service Tax on the services rendered by these vessels for the purpose of prospecting mineral oil and as such for the services consumed by Continental Shelf of India or Exclusive Economic Zone of India. The recipient of the service, ONGC, had also informed the appellant about the non-applicability of Service Tax on drilling work undertaken in open locations except the service provided to installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India for the period between 7-7-2009 to 27-2-2010.
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> … …. ……
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> **42.** In view of settled legal position, we find that the 2010 Notification cannot be said to be clarificatory in nature, but it brings about substantive change in law. Whereas the 2002 Notification as amended by 2009 Notification is applicable only to the services rendered to installations, structures and vessels, the 2010 Notification widens the tax scope and amongst various other services also brings into the Service Tax net the services rendered to or by the installations, structures and vessels.

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

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

44. In that view of the matter, we answer the substantial questions of law as under :-

Question (a)

The learned Tribunal erred in holding that the transactions involved in the present case falls under Notification No. 21/2009-S.T., dated 7-7-2009 issued under the provisions of clause (a) of sub-section (6) of Section 6 and clause (a) of sub-section (7) of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

Question (b)

As a consequence of answer to Question (a), it is held the learned Tribunal has erred in upholding the tax demand against the appellant.

Question (c)

In view of answers to Questions (a) and (b) holding that the demand for tax against the appellant was not justified, we do not find it necessary to go into the said question.

45. Appeal is, accordingly, allowed in terms of prayer clause (b). However, in the facts and circumstances, no order as to costs."

11. The territorial application of the service tax and the commencement of its application from 01.07.1994 and the change brought forth in the application w.e.f. 07.07.2009 has been discussed in the case of *Reliance Industries Vs Commissioner of Service Tax, LTU Mumbai* - 2013-TIOL-1900 CESTAT-MUM. The relevant para of the said decision is reproduced as under :

"**3**. The contention of the appellants is that during the relevant period, the pre-construction and for construction services in respect of which refund

has been claimed were provided and consumed in such areas of CS & EEZ to which the provisions of the Finance Act 1994 had either not been extended, or if extended, were exempted under the IOS Rules 2006. The Lower Authorities have failed to take note of the fact that till 01.07.2012, the Service Tax Legislation did not apply to the entire CS and EEZ of India, but to only some parts thereof and that it was only with effect from 01.07.2012 that the coverage became wide enough to cover the pre-construction and for construction services rendered anywhere in the CS and EEZ of India. It was submitted that the lower authorities have failed to appreciate that the amendments brought about with effect from 27.02.2010 (by issue of Notification No.14/2010-ST dated 27.02.2010 and Notification No.16/2010-ST dated 27.02.2010) had to be construed contextually in the light of the following legislative history concerning the territorial coverage of the Act.

i) With effect from 01.07.1994 (but till 01.03.2002), the provisions of Chapter V of the Finance Act, 1994 did not apply to any area in the CS and EEZ of India. During this period the provisions of the Act applied to the "whole of India except the State of Jammu & Kashmir". In the absence of a statutory definition of "India", the meaning of "India" in terms of Section 3(28) of the General Clauses Act was required to be applied which defined "India" as "all territories for the time being comprised in the territory of India". The "territory of India" according to Article 1 of the Constitution of India is the sum total of the territories of the States; the union territories; and such other territories as may be acquired. Interpreting Article 1 of the Constitution of India, the Bombay High Court in the case of Commissioner of Customs Vs. Nobel Asset Co. reported in 2008 (230) ELT 22 has held that the CS and EEZ of India is not a part of the "territory of India." The CBEC has also recognized this position and stated so in Circular No.36/4/2001-ST dated 08.10.2001 as extracted in Para 3(c) above

(ii) With effect from 01.03.2002, (but till 07.07.2009) the provisions of the Act, were extended beyond the territorial waters of India but only to the designated areas in the CS & EEZ of India. These designated areas to which the Act was extended were the platforms and structures specified in Notification No.S.O.429(E) dated 18.07.1986 and Notification No.S.O.643 (E) dated 19.9.1996 issued by the Ministry of External Affairs.

(iii) With effect from 07.07.2009 (but till 27.02.2010) the provisions of the Act, were extended further by issue of Notification No.21/2009 dated 07.07.2009 to "installations, structures and vessels in the CS & EEZ of India".

(iv) With effect from 27.2.2010, (but till 01.07.2012), the Act was further extended by issue of Notification No. 14/2010-ST to the areas specified in column (2) to the table to the said Notification, albeit for the purpose specified in column (3) of the said table.

> (v) With effect from 01.07.2012, the Service Tax legislation was further extended to the whole of CS & EEZ of India by inserting a statutory definition of "India" in Chapter V of the Finance Act, 1994. The said definition of India reads thus :
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> "India" means;
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> (a) The territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
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> (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);
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> (c) the seabed and the subsoil underlying the territorial waters;
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> (d) the air space above its territory and territorial waters; and
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> (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;"

12. Undisputedly, the repair, and maintenance work has been carried out in the non-designated area. From the discussions made above, the demand cannot sustain and requires to be set aside which we hereby do. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.

(pronounced in court on 28.02.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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