

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.375 of 2012

(Arising out of Order-in-Original No.03/ST/ADJ/Commr./DIB/12 dated 04.04.2012 passed by Commissioner of Central Excise & Service Tax, Dibrugarh)

M/s Oil and Natural Gas Corporation

ERBC, Nazira, Shivsagar-785685, Assam

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

Milan Nagar, Lane "F", P.O. C.R. Building, Dibrugarh-786003

Respondent

APPEARANCE :

Shri Deepro Sen & Shri S.Betal, both Advocates for the Appellant
Shri J.Chattopadhyay, Authorised Representative for the Respondent

CORAM:

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

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

FINAL ORDER NO...76335/2023

DATE OF HEARING : 03 .08.2023

DATE OF DECISION : 03 .08.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax from the appellant for the period April, 2007 to May, 2007 by issuance of show-cause notice dated 14.12.2011.

2. Briefly stated the facts of the case are that the appellant being a Public Sector Undertaking, floated a tender in order to invite bids for hiring of services for drain hole drilling in the existing oils wells un Assam using Ultra Short Radius Drilling Technology. The work was awarded to M/s Well Flow Drilling Services having its Principal Office in Bahrain. Thereafter a contract dated 25.08.2006 was executed between the appellant and the contractor.

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2.1 The aforesaid work is to plug existing dead wells and drill new wells for exploration of oil by making horizontal drilling from such existing/dead wells. The said process is known as Ultra Short Radius Horizontal Drilling.

2.2 The Revenue alleges that the appellant has executed works contract services. Thereafter, a show-cause notice dated 14.12.2011 was issued demanding service tax from the appellant under reverse charge mechanism under the category of "management, maintenance and repair" services.

2.3 The matter was adjudicated and it was held that before 01.06.2007, the services received were classifiable under "management, maintenance and repair" services till May, 2007 and w.e.f. 01.06.2007, the services received by the appellant will fall under the specific category of "mining service". It is also held that w.e.f. 01.06.2007, the appellants were liable to pay service tax under reverse charge mechanism.

2.4 Therefore, for the period post 01.06.2007, the proceedings were dropped against the appellant, but for the earlier period, the service tax is demanded under the category of "management, maintenance and repair" services.

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

3. The Id.Counsel for the appellant, submitted that the services received by the appellants were classifiable under "mining service" as the same is in relation to mining of mineral, oil or gas, the same is taxable w.e.f. 01.06.2007. Therefore, the appellant is not liable to pay service tax for period prior to 01.06.2007 under "management,

maintenance and repair” services. It is his submission that there is no management services received by the appellant and the exact work undertaken by the contractor is to plug existing dead wells and drill new wells for exploration of oil by making horizontal drilling from such existing/dead wells. He, therefore, submits that the impugned proceedings are to be dropped against the appellant.

4. On the other hand, the Id.A.R. for the Revenue, supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We have gone through the impugned order and the scope of the works executed by the contractor is as under :

"1.0 INTRODUCTION

ONGC has planned a project of drilling and re-completing 15 Ultra Short Radius Drain Holes (USRDH) from existing wells of Assam Asset, Nazira on Integrated Well Completion Basis. These 15 wells are spread over two different sandstone reservoir fields of Assam Asset, namely Lakwa – Lakhmani and Geleki. The drain holes are to be drilled from wells presently completed with 5½"/ 5¾" production casing with USRDH technology wherein vertical section of curve ranging from 8m to 12m.

The prospective contractor for drilling and re-completion of the 15 drain hole wells has to undertake the job on Integrated Well Completion Basis and shall provide the rig along with the set of required services. These wells shall be cleared by Corporation up to approx. 20 m below casing milling top or as per plan. Casing milling (top) shall be decided by the Corporation and Contractor jointly while designing the well for USRDH. Subsequently, wells shall be handed over to the Contractor for casing milling, kick-off, further drilling, completion and testing up to the target depth (within the defined top and bottom of the

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sweet zone) with horizontal drain length of maximum 200 m in the desired Azimuth (tolerance-+20°) by using his own Rig, equipment, materials, services, manpower, mud engineering services, consultants, etc. as required for Successful Completion of the job.....

5.0 GENRAL PROVISIONS BY CONTRACTOR

The Contractor scope of work for drilling and completing USRDH wells includes the following major activities, but not limited to:

- Well designing and planning in consultation with Corporation,
- Rigs and Equipment,
- Personnel Management
- Materials Management
- Well Preparation (Section milling, Under-reaming Dressing off cement Kickoff Plug, Drilling Pilot Hole to KOP)
- Drilling of USRDH including Non-Damaging drilling fluids.
- Well Completion with Gas Lift/AL. (as per schedule of responsibility Clause No. 14)

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6.0 SPECIFIC DESCRIPTION OF THE CONTRACTOR'S SERVICES**6.1 WELL DESIGING AND PLANNING**

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- To provide the step by step plan for rig deployment, drilling, completion and testing of each well along with time schedule for each activity.....

6.2 RIG AND EQUIPMENT

- To deploy one suitable rig complete with all equipment, system, tools and accessories capable for drilling and completion of USRDH wells of depth up to 2800m from existing wells.....

6.3 ULTRA SHORT RADIUS RELATED SERVICES

- The Service to be provided under this Contract is the provision of equipment and services to design, execute and drill Ultra Short Radius (USR) wells with a radius of curvature of 8-12m.

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- *Ultra-short radius drain hole drilling system mechanics includes the Gyro for tool face orientation, Speciality drill pipes (SDP) suitable PDC bits, Curve drilling assembly (CDA), Lateral drilling Assembly (LDA) and Tri-axial Survey Tool.*
- *The rotary steerable system should have ability to re-enter existing wells completed with completed with 5½" or 5¾" OD casing and for drilling horizontal wells with consistent radius of curvature of 8m-12m. A surface read-panel tri-axial surveying tool for use with rotary steerable system is also required with an inclination and azimuth unit that transmit the survey data.....*

6.5 WELL PREPARATION

To carry out nipping down X-mas tree and well heads, installation of new wellhead, testing of seals, installation of BOP and well preparation for USRDH as below;

- *Casing section milling and under reaming the section interval*
- *Providing the slurry design recipe including cement additives and supervision of cement kick-off plug*
- *Dressing of the cement plug to a pre-determined depth.*
- *Drilling the pilot hole to the desired kick-off point.....*

6.6 USRDH DRILLING:

- *To plan and design drain hole drilling in consultation with Corporation and undertake tool face orientation with gyro curve and lateral drilling and surveying of 4½" / 3 7/8" hole using USRD technology as per planned well trajectory. Drain hole length shall be of the order of 150m.....*

6.7 WELL COMPLETION SERVICES

- *To plan, design, execute and co-ordinate the various activities of completion and testing in consultation with Corporation.....*

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- Where ever required USRDH wells to be completed with either perforated tubing or premium sand screen of appropriate size (2 1/15" / 2 3/8") in the drain hole section and blind tubing in the shaly curved part of wells.....

9.0 EQUIPMENT/MATERIAL AND SERVICES

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9.9 Contractor shall provide mud services including, but not limited to, Non damaging drilling fluid system, torque reduction chemicals and Completion fluids.

9.10 Contractor shall provide Mud laboratory and measurement equipment.

9.11 Contractor shall provide slurry design and cementing additives for plug jobs.

9.12 Contractor shall provide HSD, lubricants, greases, hydraulic oil, potable drinking water, personal protective equipment etc.

9.13 Other materials like Mud Chemicals, acid / chemicals for well bore clean up, if required shall be provided by contractor and charged out separately on consignment basis.

9.14 The payment for perforated tubing, blind tubing for curve and lateral and premium sand screens shall be made as per actual quantity ordered. All other consumables/services for well completion (as detailed in 6.7) should be covered under indicated price ceiling of a well....."

7. We find that the activity in question with regard to exploration of oil by making horizontal drilling from existing/dead wells, there is no activity in the work order with regard to "management, maintenance and repair" services of the existing wells.

8. In that circumstances, we hold that the merits classification of the above services is "mining service", which came under the Statute

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w.e.f. 01.06.2007 and in the case of Atwood Oceanics Pacific Limited Vs. Commissioner of Service Tax, Ahmedabad reported in 2013 (32) STR 756 (Tri.-Ahmd.), this Tribunal held that the drilling, testing and completion of exploratory oil wells will be taxable only w.e.f. 01.06.2007 as services in relation to mining of mineral, oil or gas.

9. Again, in the case of M/s Quippo Oil and Gas Infrastructure Limited Vs. Commissioner of Service Tax reported in 2020 TIOL-1599-CESTAT-DEL, the activity of drilling of core holes and test wells was held to be taxable only w.e.f. 01.06.2007 as services in relation to mining of mineral, oil or gas. We are, therefore, of the view that the activities in question, do qualify as "mining services", which came into taxable list w.e.f. 01.06.2007.

10. Therefore, we hold that for the prior period, no service tax is payable under "management, maintenance and repair" services.

11. Accordingly, the impugned demand against the appellant under reverse charge mechanism, is set aside.

12. In the result, we allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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