IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.III

SERVICE TAX APPEAL No.40371 OF 2021

(Arising out of Order-in-Original No.03/2019 (R) dated 30.05.2019 passed by Commissioner of GST and Central Excise, Chennai Outer, Newry Towers, No.2054 – III Avenue, Anna Nagar, Chennai 600 040).

M/s.Hardy Exploration and Production (India) Inc. ...Appellant
Floor 5, Westminster,
Building 108,
Dr.Radhakrishnan Salai
Chennai 600 004.

Versus

The Commissioner of GST & Central Excise, ...Respondent
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

SERVICE TAX APPEAL No.41604 OF 2019

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Versus

M/s.Hardy Exploration and Production (India) Inc. ...Respondent
Floor 5, Westminster,
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Dr.Radhakrishnan Salai
Chennai 600 004.

APPEARANCE:

Shri K. Sivarajan, Chartered Accountant
For the Appellant

Shri Rudra Pratap Singh, Additional Commissioner (A.R)
For the Respondent

CORAM :

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

DATE OF HEARING: 06.10.2023

DATE OF DECISION: 09.01.2024

FINAL ORDER Nos.40032-40033/2024

ORDER: Per Ms. SULEKHA BEEVI C.S.

Both these appeals arise out of the same impugned order. Hence, these appeals were heard together and are disposed of by this common order. The parties are hereafter referred to as assessee and department, for the sake of convenience.

1. Brief facts are that the assessee M/s.Hardy Exploration and Production (India) Incorporation, earlier known as M/s. Vaalco Energy (India) Incorporation is into the business of exploration and production of crude oil and natural gas. The assessee is registered with the Service Tax Department. On the basis of intelligence that the assessee has not been paying service tax on the services of 'Survey and exploration rendered by them as an "Operator" and on production cost recovered from the Petroleum produced, investigation was initiated against the assessee.

1.2.1. It was noted that the assessee has participating interest in four blocks. A block is a pre-defined area for exploration and production of petroleum as identified by the Government of India. Out of four blocks, in two blocks (CY-OS 90/1 (PY-3) and CY-03/2) the assessee has been appointed as the operator. The Production Sharing Contract (PSC) is entered into between Government of India and the assessee for a block. Government of

India is a stakeholder in the PSC. As stipulated in the Production Sharing Contract and Joint Operation Agreement, the Government of India is the owner of the block and owner of the petroleum underlying therein. The block is leased to the contractor (assessee) for Exploration, Development and Production for a specified period only. As a consideration, the contractor is entitled to recover Exploration Cost and Production cost as defined in the PSC. Government of India, being the owner of the fields/blocks, exercises absolute control on the operation being undertaken by the contractor by way of a Management Committee which is headed by the representative of the Government of India. The contractor is also required to adhere to the Minimum Work Programme as agreed before the award of the contract and also have to submit periodical reports to the Government detailing the various developments.

1.2.2. Even though the lease is granted for a specified period, the contractor is not free to do any activity on his own unless it is approved by the Government. The petroleum produced in the contract area has to be sold as per the Government regulation to the Government or to the nominee of the Government only. The assessee as Operator has to undertake all the activities of Exploration and Production in terms of Minimum Work Programme as mentioned in the Production Sharing Contract. The assessee is entitled to recover first the production cost incurred by them during the year from which the Petroleum is produced.

1.2.3. The department entertained a view that the activity of production undertaken as per PSC is classifiable under ‘Mining

Services' and the consideration for the service is received as production cost, a taxable service. Further, the assessee is entitled to recover development cost from the remaining petroleum after the deduction of production cost. The activity of development is classifiable under 'Survey and Exploration Services' and the consideration for the service is received as development cost as mentioned above. The balance petroleum after deduction of production cost and development cost is treated as profit petroleum and is shared between Government of India and Contractor (assessee) in terms of PSC.

1.2.4. The activities of Exploration and Development being provided by the assessee as an operator appeared to be taxable services falling under the category of 'Survey and Exploration of Mineral Services'. The services of Production provided by the assessee as an operator appeared to fall under the category of 'Mining Services'. The activity of Survey, Exploration and Production is a continuous process in a particular block. In a particular block one well may be dug for exploration and other may be a producing well. The service is deemed to be completed as and when the operator submits a report to the Government of India through the Management Committee in Format 1 to 5 as prescribed in the PSC.

1.2.5. These services of Survey and Exploration and Mining are continuous service and the assessee is not raising any bills/ invoices. The aspect of service being rendered is known and quantified at the time of filing of Format-I to Format-5 to the Government of India. The services have to be considered as

rendered as and when the assessee has submitted the audited details in Format-1 to Format-5 to the Government of India.

1.2.6. The assessee received various charges, viz., Production cost, Exploration and Development cost, etc., for which service tax is payable under 'Mining services' and 'Survey and Exploration services' up to 30.06.2012 and taxable as 'service' from 01.07.2012 onwards.

1.2.7. The assessee as an operator provided Survey & Exploration Services and Mining Services for two blocks. The services of Survey Exploration and Development rendered by the assessee as an operator are classifiable under Survey and Exploration of Minerals as defined in Section 65 (104a) and Section 65 (105) (zzv) of the Finance Act, 1994. The services of Production rendered by the assessee as an operator are classifiable under Mining Services as defined in Section 65 (105) (zzzy) of the Finance Act, 1994. The services rendered by the assessee from 01.07.2012 are classifiable as 'Service' under Section 65B (44) of the Finance Act, 1994 as taxable services as these do not fall under the Negative List as per Section 66D of the Finance Act, 1994 or are otherwise exempt. Therefore are taxable services.

2. Accordingly, Show Cause Notice No.44/2016 dated 21.4.2016 was issued to the assessee proposing to demand the Service Tax under mining services as defined under Section 65 (105) (ZZZY) of the Finance Act 1994 up to 30.6.2012 and after such date under taxable service defined under 65 B (44) of the Finance Act 1994. Show Cause Notices also proposed to demand

service tax under 'survey and exploration services' defined under Section 65 (104) (a) read with 65 (105) (zzv) of Finance Act 1994 up to 30.6.2012 and as under section 65 B 44 from 1.7.2012 onwards. The Show Cause Notice proposed to demand interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand under 'Mining services' as proposed in the Show Cause Notice along with interest. The demand proposed in the Show Cause Notice regard to survey and exploration services was reduced to Rs.5,73,58,048/- and equal penalties was imposed. An option for payment of reduced penalty if the demand along with interest is paid within 30 days of the receipt of the order was also extended. Aggrieved by the confirmation of demand, interest and the penalties imposed the assessee has filed Appeal No.ST/40371 of 2021. The department has filed Appeal No.ST/41601 of 2019, against the order of adjudicating authority, aggrieved by not confirming the entire demand in respect of survey and exploration of services.

2.1 The learned consultant Shri Sivarajan appeared and argued for the assessee. The appellant is an establishment under the laws of State of Delaware, United States of America, and has its project office in India. The project office is engaged in the business of exploration and production of oil and gas and has executed many Production Sharing Contracts ("PSC") with Government of India ("GOI") for exploration and development of various oil and gas blocks in India.

2.2 The national oil companies viz; Oil and Natural Gas Corporation Ltd ("ONGC") and Oil India Ltd. ("OIL") were carrying out hydrocarbon Exploration & production activity in the country

since inception. Post liberalisation in the early 1990s, participation of Indian and foreign companies in exploration and development activities was allowed to supplement the efforts of national oil companies to narrow the gap between supply and demand. New Exploration Licensing Policy (NELP) was formulated by the Government of India for a new contractual and fiscal model for award of contracts. The main objective of NELP was to attract significant risk capital from Indian and foreign companies and best management practices to explore oil and gas resources in the country to meet rising demands of oil and gas.

2.3 Oil and Gas blocks in India can be classified into 4 categories based on allocation. These are nomination blocks (prior to Pre-NELP), Pre NELP blocks (discovered), Pre-NELP blocks (exploration) and NELP blocks.

Nomination Basis: Petroleum Exploration License (PEL) were granted to ONGC and OIL on nomination basis prior to implementation of NELP.

Pre-NELP Discovered Field: Petroleum Mining Lease (PML) were granted under the small/ medium size discovered field PSC during 1991 to 1993 where operators of blocks were private companies and ONGC/OIL, had a participating interest. Block PY-3 is a Pre- NELP discovered field and the PSC was signed on 30 December 1994.

Pre-NELP Exploration Blocks: 28 exploration blocks were awarded to private companies between 1990 and prior to implementation of NELP (1999) where ONGC and OIL have the rights for participation in the block after hydrocarbon discoveries.

Block CY- OS/2 is a pre-NELP exploration block and the PSC was signed on 19 November 1996.

New Exploration Licensing Policy (1999 onwards): Under NELP, exploration blocks were awarded to Indian private and foreign companies through international competitive bidding process where ONGC and OIL were also competing.

2.4 On award of the block, Production Sharing Contract ("PSC") is signed by all participating companies and the Government. One of the participant company is identified as Operator of the block on behalf of the other participating companies. In few cases two operators are also appointed for jointly managing the same block.

2.5 Apart from PSC, Joint Operating Agreement ("JOA") is signed between participating companies. Operator carries out the entire operations as provided in the PSC, JOA and also based on approvals of Operating Committee and Management Committee.

2.6 The operations carried out by any upstream oil and gas companies can be segregated into acquisition, exploration, development and production. The E&P lifecycle can be classified into the following major activities:

- Acquisition of property
- Exploration and appraisal
- Development
- Production
- Abandonment and surrender of properties

2.7 Acquisition of property: The acquisition phase involves obtaining legal rights to explore, develop and produce oil, natural

gas and similar resources through a PSC. Pursuant to the PSC, an E&P company wishing to undertake survey and exploration activities has to initially obtain a Petroleum Exploration License ("PEL") or a Letter of Authority (LOA) PELs are usually granted for six years and can be renewed for a further period of six years.

2.8 Exploration and appraisal: Post acquisition, E&P companies perform Geological and Geophysical ("G&G") works to evaluate the likelihood of those specific areas containing oil or gas reserves. This may include site surveys, seismic studies, including exploratory drilling. If the study of the seismic survey indicates that the structure will yield hydrocarbons, the company starts drilling an exploratory well in the chosen site. The results of the exploration activity could be a discovery. The reserve estimates at this stage may be proved or unproved. The estimates are further confirmed and the commercial quantities are determined by the appraisal activity. After an exploratory well (or more than one exploratory well) has been drilled into a reservoir and has resulted in the discovery of oil and/or gas reserves, additional wells, known as appraisal wells, may be drilled to gain information about the size and characteristics of the reservoir, to help in assessing its commercial potential and to better estimate the recoverable reserves.

2.9 Development: Development is the establishment of access to the mineral reserves and other preparations for commercial production. The development phase involves:

- Gaining access to and preparing well locations for drilling, clearing ground, draining, building roads, and relocating public roads, gas lines and power lines to develop reserves

- Constructing platforms or preparing drill sites;
- Drilling wells to gain access to and produce the oil and gas reserves; and
- Installing equipment and facilities necessary for getting the oil and gas to the surface and for handling, storing and processing or treating the oil and gas to make them transportable.

2.10 Production: This phase involves extraction of natural resources from the earth and the related processes necessary to make the produced resource marketable or transportable. These activities include lifting the oil or gas to the surface, gathering production from individual wells to a common point in the field, field treating, field processing and storage of the production in field storage tanks.

2.11 Abandonment and surrender of properties: Abandonment is the term most widely used to describe the process of plugging and abandoning wells, of dismantlement of wellheads, of production and transport facilities and of restoration of producing areas in accordance with licence requirements and the relevant legislation. Thus, abandonment relates to the discontinuation of all operations and surrendering of all interest in a property.

2.12 Oil and gas sector is under the control of Directorate General of Hydrocarbons (DGH) and Ministry of Petroleum and Natural Gas ("MoPNG")

2.13 At each stage, budget estimates are presented to Operating Committee (comprises members from participating companies) and once approved by Operating Committee, budget is submitted

to Management Committee (comprises members from participating companies, DGH and MoPNG).

2.14 Based on the budget approvals, every month an estimate of expenditure is submitted to all the non-operators for funding the block as per the respective participating interest. The statement of estimation is known as Cash Call Statement.

2.15 For each block, a separate bank account is maintained and separate books of accounts are maintained for expenditure. Revenue from sale of crude oil is accounted in the corporate books of the respective participants. i.e., each individual participant of the consortium gets his share of revenue directly to their bank account and does not come to the operator. Contracts are entered with the vendors by the operator on behalf of other partners and approval by partners. Payments are made from the respective block bank accounts.

2.16 PSC defines the modality and formula to calculate profit. It has to be shared with Government of India based on the slabs as provided in the PSC. Hence, it is relevant to see few definitions of the terms used in PSC.

Cost Petroleum: means portion of total volume of petroleum produced and saved from contract area which the contractor is entitled to take in a particular period for the recovery of contract costs.

Profit Petroleum: means all petroleum produced and saved from the contract area in a particular period as reduced by the cost petroleum.

Investment Multiple: means in relation to the contract area the ratio of accumulated net cash income from the contract area to accumulated investment in the contract area earned by the companies.

2.17 To put it in simple terms, profit is arrived after reducing costs from revenue that is shared with GOI as per the slabs provided in the PSC. The term 'cost recovery' is used in PSC for the costs that is incurred in the block at various stages. No cost is recovered from GOI, i.e. there is no consideration or reimbursement from GOI.

2.18 Further, it also needs mention that only profits are shared with Government. In cases of losses, the same is being borne by the contractor/companies and not by the Government.

2.19 In India, the assessee has participating interest in one producing asset and two exploration blocks as below:

> Block CY-OS-90/1 ("PY-3"): assessee has an 18% interest in this field and is the operator of the Block. The PY-3 field is located off the east coast of India 80 km south of Pondicherry in water depths between 40 m and 450 m. The licence, which covers 81 km, produces high quality light crude oil (49° API). The other partners in this block are ONGC (40%), Tata Petrodyne (21%) and Hindustan Oil Exploration Company (21%).
>
> Block CY-OS/2: assessee has 75% participating interest in this exploration block and GAIL holds the balance 25%. ONGC is the licensee of this block with an option to acquire up to 30% interest at development stage. Block CY-OS/2 is located in the northern part of the Cauvery Basin immediately offshore from Pondicherry and covers

approximately 859 km². Hardy is the Operator of the block.

Block GS-01: Hardy has a 10 per cent participating interest in this offshore exploration license. Its partner Reliance Industries is the Operator of the license.

2.20 In response to the SCN, the assessee vide letter dated October 1, 2014 submitted the following documents.

- Auditors Report for UJV from 2009-10 onwards for the blocks where HEPI is the operator.
- Annual Report from 2009-2010 to 2010-11,
- Product Sharing Contracts and Joint Operation Agreements.
- Service Tax Returns
- Amount recovered towards Cost Petroleum, Block-wise
- Production Expenditure, Block-wise

2.21 The Ld. Consultant reiterated the contentions put forward in the reply to SCN, which are as under:

a) That no service provider/receiver relationship exists between the assessee and the government;

b) That the issue is covered by clarification provided by CBEC in paragraph 6.2.5 of education guide;

c) That the activity, even if assumed to be service results in manufacture/production of oil and gas in the negative list of services under Section 66D(f) of the Act;

d) That the activity carried out by the assessee is an activity of production and sale and there is no collection of any consideration towards any service;

e) That even if assumed that there is rendition of service, mere reimbursements/cost recovery do not constitute receipt of consideration received by the assessee;

f) That the allegation of cost petroleum being consideration to be paid by GOI to the assessee is incorrect and based on complete mis-reading of the PSC.

g) That the classification as mining service or survey and exploration service prior to July 1, 2012 is erroneous, as Section 65(105) (zzzy) of the Act only covers those activities in relation to mining services and not the mining services per se;

h) That the classification as service under Section 65B (44) of the Act post July 1, 2012 is incorrect as mere transfer of title in goods (property in crude oil gets transferred from assessee to GOI in this case) is excluded from the definition of service under Section 65B (44);

That the SCN contains the following factual errors:

a) There is a double count of production expense under the category 'mining service as production cost and under the category 'survey and exploration of minerals as exploration cost.

b) Even if it is assumed that, extended period is invokable, it cannot be invoked for the period April 2010 September 2010 as it exceeds 5 years from the relevant date of issuance of SCN.

c) That even if it is assumed that transaction is liable to service tax, the Appellant would be eligible to avail and set off CENVAT credit on inputs and input services for provision of output service;

d) That interest under Section 75 of the Act is not payable as no service tax is payable;

That penalty under Section 78 of the Act is not leviable as:

a) PSC arrangements and other relevant documents were well within the knowledge of CBEC authorities;

b) PSC arrangements of various blocks are subject to innumerable enquiries in audit from time to time;

c) There has been no suppression of facts by the assessee.

2.22 The Ld. Consultant asserted that there is no service provider/service relationship between the assessee and the GOI. It is submitted that the activities undertaken by the assessee are not services provided to any third party, as they are all aimed at advancing the assessee's own interest, since assessee has made substantial investments in the venture. There is no intention on the assessee's part to render any service.

2.23 In the Paras 4.5.1 to 4.6.1 of impugned order, the department has observed that the Government of India alone has rights over subsurface petroleum for which it has licensed the operators thereby making the Government the beneficiary for whom exploration is undertaken. The relevant extracts of these findings in the Impugned Order are as below -

> *"4.5.1. that the government of India alone has the rights over subsurface petroleum which it would like to exploit. Government of India accordingly has licensed the operators to ensure proper exploration to authenticate and validate the presence of minerals as an operator the assessee has undertaken all activities of exploration and production as mentioned in the Production Sharing Contract. It is apparent that exploration is entrusted to the operators and the government of India is the beneficiary for whom the exploration is undertaken by the operators.*
>
> *4.5.3 In view of this, I find that the activities of surfacing of mineral oil undertaken by the assessee as an operator on behalf of government of India falls within the ambit of survey and exploration of minerals as services provided to government of India.*
>
> *4.5.5. In view of the above, I find that the activities of surfacing of mineral oil undertaken by the assessee as an operator on behalf of the government of India falls within the ambit of survey and exploration of minerals as services provided to a customer, government of India in this case.*
>
> *4.6.1. At Para 1 of PSC it is clearly mentioned that Petroleum in its natural state is vested in the Union of India and that Government of India is the absolute owner of the Petroleum...."*

2.24 The Ld. Consultant argued that the above observations of the adjudicating authority are rendered by misinterpreting the provisions of the PSC, and thus has erroneously assumed that the relationship between the GOI and the operator (assessee) is that of an owner - contractor. Further, as per Article 7 of PSC, the

contractor shall have the exclusive right to carry out petroleum operations in the contracted area and to recover costs and expenses as provided in the contract. It is also relevant to mention that under Article 1 "Petroleum Operations" includes sale or disposition of petroleum to the delivery point.

2.25 Additionally, Article 28 of the PSC provides that title to petroleum shall be transferred to the contractors in accordance with the terms of the contract. The PSC also provides that the title to petroleum sold to Government, or its nominee shall get transferred at the delivery point.

2.26 Circular No.32/06/2018-GST dated February 12, 2018 clarifies that the relationship between the Oil Exploration operator and the production contractors with the Government is that of Licensor/ Lessor and Licensee/ Lessee. It is specifically also clarified that the Oil exploration and production contractor has obtained the right to explore, exploit and sell petroleum in lieu of royalty and in lieu of profit petroleum and therefore the exploration and production is for themselves and not a service to the Government. The contractor has the exclusive right to recover the cost and expenses and all the activities are conducted at their own risk.

2.27 Prior to issuance of the aforesaid clarification, the said issue was discussed in the 20th, 23rd and 25th GST Council Meetings in detail. Post the detailed discussion, the above referred circular was issued. In this regard, some key points from the agenda of 25th GST Council Meeting based on which the said circular was

issued: (Agenda 54 of the GST Council Meeting, Page No.67 of the Agenda)

was pointed out. At sl.no.54, the proposal is to clarify that cost petroleum is not per se taxable. The summary of the justification in column 3 of the table is as below:

> a. The GOI is the sole owner of the petroleum underlying except for the part of the crude oil for which the title has been transferred to the contractor in terms of the Provision of PSC:
>
> b. The contractor is the owner of the mined crude oil as long as he pays the royalty to the Government.
>
> c. The relationship between the Government and the contractor under PSC is not that of partners but of an assignor and assignee.
>
> d. The contractor carries out the operation for themselves and not as a service to the Government.
>
> e. Cost Petroleum is not a consideration for service to GOI and thus not taxable per se.
>
> f. There are different models followed across the country in relation to oil exploration, In India the Government does not enter into a service agreement under which it hires the services of mining from an oil and gas company or joint venture and retains the risks and benefits of exploration and pays the oil and gas company only for its services...".

2.28 It is argued by the Ld. Consultant that from the above agenda of the meeting, it is clear that there is no service provider-service recipient relationship between the assessee and the Government. The contractor i.e. the assessee in the present case, is the owner of the crude oil as he has acquired the rights to explore, exploit and sell petroleum in lieu of royalty payment and in lieu of profit petroleum.

2.29 The Ld. Consultant relied on the order of **CESTAT Mumbai bench in the case of M/s. B.G Exploration and Production India Ltd vs Commissioner of CGST & Cx 2022 (1) TMI 207- CESTAT MUMBAI] dated 4 January 2022 ("BG- 3")**, wherein it was held that there is no service rendered by the operator to the Government of India under the Production sharing Contract and the 'Cost Petroleum and Profit Petroleum' are not consideration for services and therefore not leviable to Service Tax.

2.30 The decision of CESTAT Mumbai in the case the of ***M/S Reliance Industries Limited Versus Commissioner Of CGST & Central Excise, Belapur [2023 (4) TMI 921 CESTAT MUMBAI] (hereinafter referred to as "Reliance -1")*** was relied to argue that in this decision the order in the case of B.G Exploration and Production India Ltd vs. Commissioner of CGST & Cx bearing (2022 (1) TMI 207- CESTAT MUMBAI] dated 4 January 2022 was relied where it was held that there is neither any service rendered by the operator under the Joint venture to other member which is constituted under PSC and nor any consideration.

2.31 The decision of CESTAT Mumbai bench in the case of M/s Reliance Industries Limited Versus Commissioner Of CGST & Central Excise, Belapur [2023-VIL-945-CESTAT- MUM-ST] (hereinafter referred to as Reliance -2) was relied in which CESTAT by following the decision in case of BG- 3 and Circular No.32 dt.12.02.2018, held that the costs incurred by the assessee for the conduct of the joint operations is nothing but the

assessee's share of capital contribution to the Joint venture and consequently, there is no basis to hold that the assessee was rendering services to the Government or any of un-incorporated Joint Venture of the PI Holders.

2.32 BG Exploration & Production India Ltd Versus Commissioner of Service Tax (Audit-1) [2020 (10) TMI 579- CESTAT MUMBAI], (hereinafter referred to as "BG-1") held that there is no service rendered by the operator to the other members of joint venture which is constituted in accordance with the production sharing contract.

2.33 It is submitted that the department has entirely failed to understand underlying nature of Production Sharing Contract (PSC Contract) and has wrongly alleged that the assessee is the service provider and Government is the recipient.

2.34 The department has failed to understand that the activity results in manufacture / production of oil and gas, which is in the negative list of services under Section 66D (f) of the Act. Even if cost petroleum recovered by the assessee is assumed for the sake of argument, to be a consideration for a service, the said service results in Production of Oil and Gas and services resulting in manufacture or production of goods (viz oil and gas) are not liable to service tax in view of Section 66D of the Finance Act, which lists services by way of carrying out any process amounting to manufacture or production of goods as a service on which no tax is leviable. The activities carried out by the assessee results in production and sale of "goods" which attracts appropriate VAT and does not result in rendition of any service.

However, the adjudicating authority has not considered or examined any of these submissions. Even for the period post July 01, 2012, the activity of the assessee does not fall within the ambit of definition of service under Section 65 (44) of the Act. Additionally, in this regard, it is submitted that as per definition of "service", any activity by one person to another for a consideration constitutes service and it excludes negative list of services. The activity of the assessee results in manufacture and production of oil and gas, which is covered in negative list of services.

2.35 Without prejudice to the above submission, it is submitted that the adjudicating authority in para 4.7.1 to 4.7.10 has erred in holding that the cash calls received by the assesse are in the nature of advance payments towards taxable services to be received from the joint venture.

2.36 The Ld. Consultant adverted to Para P and Q of the facts explained in appeal that at each stage i.e. E&P lifecycle, the budget estimates are presented to Operating Committee (which comprises of members from participating companies) and once approved by Operating Committee, budget is submitted to Management Committee (which comprises members from participating companies, DGH and MoPNG). Based on the budget approvals, every month an estimate of expenditure is submitted to all the non-operators for funding the block as per the respective participating interest. The statement of estimation is known as Cash Call Statement. Upon furnishing the cash call statement, all participating members contribute as per

participating interest. These cash calls are in nature of capital contribution made for operations of Joint Operations i.e. similar to a Joint Venture.

2.37 In this regard, the Circular No.179/5/2014-ST dated 24th September 2014 was adverted to by the Ld. Consultant, and argued that it has been clarified that the cash calls are capital contributions made by the members of JV to the JV. The relevant extract is as below.

> *"3. In the context of a JV project, cash calls are capital contributions made by the members of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B (44) of the Finance Act, 1994. Whether a 'cash call' is 'merely... a transaction in money [in terms of section 65B (44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case"*

2.38 Again, Circular No.35/9/2018-GST dated 5 March 2018 under GST was also relied. Clarification has been issued on the taxability of the cash calls. The decision of Tribunal in **BG-1** has held that there is no service rendered by the operator to the other members of joint venture constituted in accordance with a production sharing contract and the obligation to contribute to the joint venture by other member is not a consideration for service. For this reason itself, the cash calls cannot be subject to levy of service tax.

2.39 The learned consultant put forward arguments on the ground of limitation also. It is submitted that the issues are purely interpretational. The assessee had not discharged the service tax on the bonafide belief that the activity does not constitute 'service' and the amounts received by the assessee

does not fit into the definition of 'consideration'. There is no positive act established against the assessee by the department which would show that the assessee has indulged in evasion of service tax. The entire figures have been obtained from the records maintained by the assessee, and there is no suppression of facts with intent to evade payment of tax. The demand raised invoking the extended period cannot sustain and prayed that it may be set aside. It is prayed that the appeal may be allowed.

3. The Ld. AR Shri. Rudra Pratap Singh appeared and argued for the appellant. The Ld. AR adverted to the definition of 'Survey and Exploration Service' under Section 65 (104a) which reads as under:

> "Survey and exploration of mineral" means geological, geophysical or other prospecting surface or subsurface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas."

3.1. It is submitted by learned AR, the activity of survey or exploration of deposits of gases and oil done by the appellant would fall within the definition. The taxable service is given in Section 65 (105) (zzv) reads as "to any person, by any person, in relation to survey and exploration of mineral". The Board Circular No.80/10 /2004-Service Tax dated 17.09.2004 has clarified that services in the nature of survey and exploration may result in locating of oil, crude etc. which implies that of whether the oil or crude is located, the activity falls under "survey and exploration services". The said services has been introduced with effect from 10.09.2004. The gross amount received by appellant in relation

to such activity is chargeable to service tax prior to and after 1.7.2012.

3.2 The Ld. AR submitted that in regard to the mining services, there is no definition of 'mining' in the Finance Act, 1994. However, in terms of Section 2 (1) (j) of Mines Act, 1952, 'Mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or carried out and includes all bore holes, oil wells and accessary crude conditioning plants including the pipe conveying mineral oil within the oil fields. The taxable service has been defined in Section 65 (105) (zzzy) to mean any service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas.

3.3 Petroleum in its natural state is vested in the Union of India and Government of India is the absolute owner of the Petroleum. The production sharing contract shows that 'Production Costs are expenses incurred on production operations after the start of the production. The balance general and administrative cost and the service cost not allocated to exploration or development cost are allocated to Production costs. The total 'cost petroleum' forms the part of production cost and is liable to be included in the gross amount charged.

3.4 The 'cash calls' are essentially payments received for performance of service and are nothing but 'consideration' for the agreement to perform the service. The Board Circular No.179 / 5 /2014-ST dated 24.09.2014 was relied by the Ld. AR. It is submitted that the payments made as cash calls pooled by a Joint

Venture towards taxable service is a consideration and therefore attracts the levy of service tax. The findings in the impugned order were supported by the Ld. AR. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. The moot point that arises for analysis is whether the entitlement of cost petroleum and profit petroleum as per the Production sharing contract is a consideration for rendering 'survey and exploration service' and 'mining services to government' whether cash calls are to be included in the taxable value.

5.1 The very same issue was considered by the Tribunal in the case of B.G.Exploration and Production India Ltd. Vs Commissioner of CST (Audit- I) 2020 (10) TMI 579 [CESTAT, Mumbai dt.11.06.2020 (BG-I). The Tribunal thoroughly examined the nature of the 'Product Sharing Contract' and whether the distribution of profit, petroleum and cost petroleum, as well as cash calls are consideration for service provided by assesse to Government. The Tribunal held that the manner in which the contract provides for distribution of 'profit petroleum' and 'cost petroleum' is a business model for ensconcing within itself the alienation of risk by the Government of India, which necessarily mandates a working arrangement for the disaggregation of cost petroleum as compensation for the mutually exclusive risks undertaken by the contractor. The Tribunal held that there is no service provider and service recipient relationship in the joint venture and the amounts in the nature of profit petroleum/cost

petroleum/ cash calls are not consideration for services. The relevant paras of the decision of Tribunal read as under:

> "11. We have no doubt that agreement among entities for rendering of service to another entity is the essence of 'joint venture'; however, it is doubtful if 'joint operation agreement', mandated by the terms of the 'production sharing contract', can be deemed to be one such in the absence of an external beneficiary. In the impugned contract, the several participating interests are, collegially, designated as 'contractor' in the singular and in furtherance of the policy of the Government of India to involve corporate participation for efficient harnessing of natural resources as codified in the 'production sharing contract' agreed upon. This, then, would be the primary association as joint venture comprising of four entities, including Government of India, for viability in extraction of natural resource as the common goal. The manner in which the contract provides for distribution of 'profit petroleum' and 'cost petroleum' is a business model for ensconcing within itself the alienation of risk by the Government of India which necessarily mandates a working arrangement for the disaggregation of 'cost petroleum' as compensation for the mutually exclusive risks undertaken by the contractor. The participating interests in the 'joint operations' have not come together of their own accord for the common purpose of bearing the risk but from one stipulation in the contract setting forth the common purpose including the participation in the proceeds of 'profit petroleum' that is extracted. The 'joint operations' does not render service, within the meaning of section 65B(44) of Finance Act, 1994, as there is no beneficiary entity outside the 'production sharing contract (PSC)', to which 'joint operations' is subordinated, for determination as joint venture to which the Explanation could be applied. This looming presence of 'production sharing contract' to the exclusion of any other independent or subordinate agreement and the indispensability of the Government of India to such contracts has been ordained by the Hon'ble Supreme Court in Reliance Natural Resources Ltd v. Reliance Industries Ltd [(2010) 7 SCC 1)}.
>
> …..
>
> 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.

17. Accordingly, the impugned order is set aside and appeal allowed".

5.2. The Tribunal in the case of B.G.Exploration and Production Vs CCGST & Central Excise, Navi Mumbai, decided on 06.10.2021 (BG-II) 2021 (10) TMI 306 CESTAT Mumbai, also dealt with similar issue. Following the earlier decision, it was held that there is no service rendered by the assessee to the joint venture and the salary expenses are not consideration for services within the meaning of Section 67 of Finance Act, 1994. The relevant paras read as under:

"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 nor 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.

… …. …

33. It can safely be concluded that the Government of India with the Appellant, RIL and ONGC had entered into a joint venture agreement, where under each co-venturer had its own set of obligations and the responsibility discharged by each of the co-ventures' 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".

5.3 The issues that arise in the case before us as to whether cost petroleum/profit petroleum are to be treated as consideration for rendering 'mining services' by assesse to government was examined in the case of B.G. Exploration &

Production India Ltd Vs CCGST & Central Excise, Navi Mumbai 2022(1) TMI 207- CESTAT Mumbai, decided on 04.01.2022 (BG-III). Besides the earlier decisions, the Tribunal also referred to the Board Circular dt.12.02.2018 to hold that the demand of service tax is not sustainable. The relevant paras read as under:

"2. Service Tax Appeal No.86312 of 2020 has been filed to assail the order dated 31.08.2020 that adjudicates the show cause notice dated 05.07.2019 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.

… …

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 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 05.07.2019, 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.

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. 01.07.2012 deals with 'Interpretations' and sub-section (44) of section 65B that defines 'service' 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

(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." 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;

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.

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.

34. The issues raised in this appeal are covered by the aforesaid earlier decision of the Tribunal rendered on 06.10.2021.

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 11.06.2020 have been considered and repelled by the Tribunal in the subsequent decision rendered on 06.10.2021. 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 12.02.2018. 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 06.10.2021.

39. The Circular dated 24.09.2014, 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 12.02.2018 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 31.08.2020 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 31.08.2020 passed by the Commissioner are set aside and the appeals are allowed”.

5.4 Similar issue was analysed in the case of M/s.Reliance Industries Ltd Vs CCGST & Central Excise, Belapur 2023(4) TMI 921 CESTAT Mumbai (Reliance -I) decided on 13.04.2023. The dispute involved was whether, the expenditure incurred by the appellant, in respect of its employees and assets which were deployed for undertaking joint operations at the blocks, while it was acting as the operator, and which was recorded as a cost incurred for undertaking joint operations, could be said to be a consideration for rendering taxable services of supplying manpower and as also providing support services for the period April 2014 to June 2017. The Tribunal answered in the negative in favour of assesse. The relevant paras read as under:

> "8. We have examined the relevant documents and records and find merit in this submission of the appellant. In our view, the PSC is a classic example of a public private partnership, where each of the coventurers contributes to the success of the venture in their own way and work towards enhancing the benefits flowing therefrom. Under the PSC, the Government of India brings on the table the block which could potentially hold crude and/or natural gas, while the technical and financial contribution is made by the PI Holders. There is also a management committee which is constituted comprising of members from the Government of India as also the PI Holders which has to interalia approve the annual work programs as also the budgets for undertaking the same. Further, the profits arising from the venture are to be shared between the Government and the PI Holder in accordance with the pre-defined percentage computed with reference to an investment-multiple on the cost incurred for undertaking the joint operation. We note that this Tribunal has in the case of B.G. Exploration and Production India Ltd., reported in 2022 (63) GSTL 351 (T) has considered a similar arrangement under another PSC between the Government of India and B.G. Exploration and Production India Ltd., ONGC and the appellant and after taking note of the policy underlying the execution of the PSCs as also the terms and conditions of the same, concluded that there was a joint venture between the GOI and the PI holders.
>
> …. ….

21. In view of the above, we are of the considered opinion that there is neither any service rendered by the Appellant nor is there any consideration involved in the appellant's deploying its man power and assets for furtherance of the operation of the joint venture. The ratio laid down in the aforesaid decision of the Tribunal in the case of B.G. Exploration & Production India Ltd., reported in 2021 (49) GSTL 143 is squarely applicable and the reason assigned by the Respondent to disregard the same i.e., there is nothing to show that the terms of the JV executed by B.G. Exploration & Production India Ltd. and those executed by the appellant were the same, appears nothing but a ruse to disregard a binding precedent. In our view, besides the fact that the broad contours of the PSC cannot be any different as the same is entered into, basis a model document devised by the Government of India. In any case, what was relevant was to observe whether the broad fact-situation in the two cases is the same. We have examined the same and do not find any real difference in the arrangement with which the Tribunal was concerned in the case of B.G. Exploration & Production India Ltd. vis-à-vis, that in the present case. We therefore, do not find any justification in the Respondent's refusal in applying the ratio laid down by this Tribunal in the case of B.G. Exploration & Production India Ltd. (supra)".

5.5 In the case of M/s.Reliance Industries Ltd Vs CCGST & Central Excise, Belapur 2023-VIL 945- CESTAT Mum-ST decided on 24.7.2023 (Reliance-II), the issue considered was whether the royalty paid by assessee to Government of India – MO P & G under the Production Sharing Contract would be liable to levy of service tax. The Tribunal after relying on the decisions rendered in the case of B.G Exploration and Productions (supra) held that the demand of service tax on royalty cannot sustain. The Tribunal has also referred to the Board Circular No.179/5/2014-ST dt.24.09.2014 and Circular No.32/06/2018-GST dt.12.02.2018. The relevant paras read as under:

"9. We find that the entire issue in this case lies in the narrow compass of whether payment of royalty on mining of minerals i.e., petroleum or natural gas to the GoI-MoP&G can be considered as service or not, and whether it attracts payment of service tax.

10. We note that this issue has arisen initially on the understanding of the Revenue on the basis of Circular No.179/5/2014-ST dated 24.09.2014, issued clarifying about the levy of service tax, inter alia, on taxable services received by a Joint Venture from its members or third party. It was stated therein that, - "In the context of a JV project, cash calls are capital contributions made by the members of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B (44) of the Finance Act, 1994. Whether a 'cash call' is 'merely... a transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts service tax.

… ….

12. We also find that in the appellant's own case in M/s Reliance Industries Limited Vs. Commissioner of CGST & Central Excise, Belapur in respect of demand of service tax towards certain expenditure incurred by the appellants as 'operator' under the Joint Operating Agreement under the PSC, the issue had been decided in favour of the appellants vide Final Order No. A/85552/2023 dated 13.04.2023. The relevant paragraphs of the above decision is extracted below:

"11. We also agree with the observations of the findings of this Tribunal in the other decision of B.G., reported in 2021 (49) GSTL 143 wherein, it has been held that the joint operations undertaken under the PSC does not result in rendition of any service as there is no beneficiary entity outside the PSC to which the joint operation are subordinated. It has been held that the cost incurred towards the employees which has been deployed towards the joint operation is a capital contribution to the venture and not a consideration to the rendition of any service.

12. In view of the above, we are of the considered opinion that there is neither any service rendered by the Appellant nor is there any consideration involved in the appellant's deploying its man power and assets for furtherance of the operation of the joint venture. The ratio laid down in the aforesaid decision of the Tribunal in the case of B.G. Exploration & Production India Ltd., reported in 2021 (49) GSTL 143 is squarely applicable and the reason assigned by the Respondent to disregard the same i.e., there is nothing to show that the terms of the JV executed by B.G. Exploration & Production India Ltd. and those executed by the appellant were the same, appears nothing but a ruse to disregard a binding precedent. In our view, besides the fact that the broad contours of the PSC cannot be any different as the same is entered into, basis a model document devised by the Government of India. In any case, what was relevant was to observe whether the broad fact-situation in the two cases is the same. We have examined the same and do not find any real difference in the arrangement with which the Tribunal was concerned in the case of B.G. Exploration & Production India Ltd. vis-à-vis, that in the present case. We therefore, do not find any

> justification in the Respondent's refusal in applying the ratio laid down by this Tribunal in the case of B.G. Exploration & Production India Ltd. (supra).
>
> 13. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant, with consequential relief, if any, as per law".

5.6 The facts of the case before us are identical to the facts in the decisions discussed above. Following the above decisions, we are of the considered opinion that the issue on merits has to be answered in favour of assessee and against the department. The appellant succeeds on merits.

5.7. The Ld. Consultant has argued on the grounds of limitation also. The litigations above would indicate that the issue is purely interpretational in nature. The assessee was under bonafide belief that being a joint venture in which even the government is a participant, there is no element of rendition of service or payment of consideration falling within the scope of Finance Act, 1994. Further, the department has not been able to establish any positive act of suppression of facts on the part of assessee with intent to evade payment of service tax. For these reasons, the assessee succeeds on the issue of limitation also.

6. The department appeal is filed against the impugned order on the ground that the method of working adopted by adjudicating authority to arrive at the demand is erroneous and thereby the tax confirmed is lesser than the demand proposed in the SCN. As the issue on merits and limitation are found in favour of assessee and against department, consequently the department appeal fails.

7. In the result, the impugned order is set aside. The assessee appeal is allowed. The department appeal is dismissed.

(pronounced in court on 09.01.2024)

VASA SESHAGIRI RAO
(Member (Technical)

SULEKHA BEEVI C.S.
(Member (Judicial)

ra/pr