CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. III

Service Tax Appeal No.51690 of 2021

[Arising out of Order-in-Appeal No.148(CRM) ST/JDR/2021 dated 8.7.2021 passed by the Commissioner (Appeals), Central Excise and CGST, Jodhpur]

Oil India Limited **...Appellant**
2A, District Shopping Centre,
Saraswati Nagar, Basni,
Jodhpur, Rajasthan-342005.

Versus

Commissioner, CGST, **...Respondent**
G-105, New Industrial Area,
Opp.Diesel Shed, Basni,
Jodhpur, Rajasthan-342 003.

APPEARANCE:
Shri B.L. Narasimhan and Ms. Sukriti Das, Advocates for the appellant
Shri Vivek Kumar Jain, Authorised Representative for the respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50138/2026

Date of Hearing: 09.01.2026
Date of Decision:21.01. 2026

BINU TAMTA:

1. M/s.Oil India Limited [1] has assailed the Order-in-Appeal No.148(CRM)ST/JDR/2021 dated 08.07.2021, whereby the demand towards service tax on 'cash calls' have been confirmed under proviso to Section 73(1) of the Finance Act, 1994 along with interest and penalty.

2. The factual matrix of the case submitted by the appellant is as under:-

2.1 The appellant is engaged in the business of exploration and production of oil and natural gas and is registered with the Service

[1] **The Appellant**

Tax Department as provider of taxable services such as 'Business Export Services', 'Technical Testing and Analysis Services etc.

2.2 In order to attract significant risk capital and as well as new technology from Indian and foreign companies, New Exploration Licensing Policy[2] was announced in the year 1999 for the auction of the area/block for the survey and exploration of crude oil/gas. The contracts for exploring crude oil and natural gas are awarded by the Government by means of a tender through auction.

2.3 Accordingly, Ministry of Petroleum and Natural Gas, Government of India under NELP proposed auction of the area/block for the survey and exploration of crude oil and natural gas.

2.4 There are two types of bidders i.e. **Category-I-** Companies bid independently for the whole or partial area out of the proposed area for auction. **Category-2-** various entities, in the form of a consortium i.e. Unincorporated Joint Ventures[3] and bid for the auction. Issue in the present case pertains only to bidders falling under **Category-2.**

2.5 The appellant has placed bids through Joint Venture Agreement entered with different parties, Hindustan Oil Exploration Co. Ltd.[4] and

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[2] **NELP**
[3] **UJV**
[4] **HOEC**

HPCL Mittal Energy Ltd.[5]. The appellant was appointed as 'Operator' in terms of Clause 7 of Production Sharing Contract[6] dated December 22, 2008 and thereby undertook various activities starting from seismic data analysis, soil study, mud logging to actual drilling and exploration. These activities are performed either by availing the services of third party contractors or the appellant undertakes certain services by employing its own resources. In terms of Joint Operating Agreement[7] dated July 27, 2009, as per Clause 7, all the costs and expenses incurred by the appellant on behalf of all the parties of the PSC in carrying out joint operations under JOA is borne and paid by the parties in proportion to their participating interest. The parties either transfer their share of expenditure in advance in the joint account or raises the claim of expenditure after incurring the same on their behalf. The claim raised by the appellant on other members of the UJV is referred to as 'cash call'. Non-operators make the payment of cash call by transfer of funds to the designated account.

2.6 On investigation, the appellant deposited service tax amounting to Rs.9,94,43,056/- 'under protest' pertaining to the period July 1, 2012 to March 31, 2016 on account of services, which are used for the petroleum operations undertaken under the PSC to the extent it pertains to the share of the non-operators. Out of the above amount, Rs.53,89,710/- pertains to the relevant blocks covered in the present proceedings. Show cause notice dated October 9, 2019 was issued to the appellant on the ground that the services provided by them, as 'Operator' to UJV as a whole are taxable under the service tax as the

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[5] **HMEL**
[6] **PSC**
[7] **JOA**

same falls within the ambit of taxable service in terms of Explanation 3(a) to Section 66B(44) of the Act. The demand was raised for the extended period as the appellant has suppressed the facts from the Department with intent to evade service tax. On adjudication, the demand of service tax amounting to Rs.1,63,92,534/- was confirmed along with interest and penalty with the direction for appropriating the amount of Rs.53,89,710/- already paid prior to the issuance of the show cause notice. The appeal filed by the appellant stands dismissed by the impugned order, which is now challenged in the present appeal before this Tribunal.

3. Shri B.L. Narasimhan, learned Counsel for the appellant submits that the issue of leviability of service tax on 'cash call' received by the appellant from the members of the Unincorporated Joint Venture formed for exploration of crude oil and natural gas is no more *res integra* and has been decided in favour of the appellant in various decisions.

4. Shri Vivek Kumar Jain, learned Authorised Representative very fairly agrees that the issue stands covered by this Tribunal in favour of the appellant.

5. Since both the sides agree that the issue is covered, we would like to refer to the decision of this Tribunal in the case of **Marmugao Port Trust Vs. CC & ST, Goa[8],** where the Bench considered the concept of Public-Private Partnership, which was held to be in the nature of Joint Venture where two parties got together to carry out a specific economic venture on a revenue sharing model. The Bench noticed that such arrangements are common nowadays, not only in

[8] **2017 (48)STR 69 (Tri.-Mum.)**

the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource over which it has the exclusive right, whether land, water front or the right to exploit the said land and water front, and the private entities brings in the required resources either capital or technical expertise necessary for commercial exploitation of the resource belonging to the Government. The Bench also noticed the meaning of the term 'Joint Venture' as interpreted by the Supreme Court in the case of **Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd.**[9] **,**wherein the Apex Court quoted with approval the following extract from the American jurisprudence "Second Edition Volume 46" defines Joint Venture to mean :-

> "17 ……A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. *More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity,* pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venture must stand in the relation of principal, as well as agent, as to each of the other coventurers within the general scope of the enterprise.
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> *Joint ventures are, in general, governed by the same rules as partnerships.* The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. *Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other.* Thus, the

[9] **2008 (12) STR 401 (SC)**

liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships."

6. The Bench, accordingly, decided the issue, *inter alia,* observing as :-

> **"15.** An analysis of this judgment shows that in order to constitute a joint venture, the arrangement amongst the parties should be a contractual one, the objective should be to undertake a common enterprise for profit. Joint control over strategic financial and operative decisions was held to be the key feature of a joint venture. The other obvious feature of a joint venture would be that the parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.
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> **17.** The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a *quid pro quo* for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the *quid pro quo* for services, which is a necessary ingredient of any taxable service is absent."

7. Lastly, the Bench considered the decision in **Cricket Club of India Vs. CST**[10] on the principle that to render a transaction liable for service tax, the nexus between consideration agreed and the service activity to be undertaken should be direct and clear and unless it is established that a specific amount has been agreed upon, as a *quid pro quo* for undertaking any particular activity by a partner, it cannot be assumed that there was consideration agreed upon for a specific activity so as to constitute the service. The relevant observations of the Tribunal were extracted as under:-

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[10] **2015 (40) STR 973**

> "11. …Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. … The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.
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> 12. … Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.

In terms thereof, the conclusion arrived at was that the activities undertaken by a partnership/co-venturers for the mutual benefit of partnership /joint venture cannot be regarded as a service rendered by one person to another for consideration and, therefore, cannot be taxed.

8. The aforesaid decision in **Marmugao Port Trust** has been considered consistently and followed by the Tribunal in the case of **B.G. Exploration & Production India Ltd.** on three occasions as under:-

(I) **B.G. Exploration & Production India Ltd. Vs. CST (Audit-I), Mumbai**[11]

(II) **B.G. Exploration & Production India Ltd. Vs. Commissioner of CGST & Central Excise, Navi Mumbai**[12]

(III) **B.G. Exploration & Production India Ltd. Vs. Commissioner of CGST & Central Excise, Navi Mumbai**[13]

9. The aforesaid decisions have followed the **Circular No.179/5/2014 –ST dated September 24, 2014,** whereby CBEC clarified that in the context of Joint Venture Projects, cash calls are capital contributions and hence not liable to service tax. In these decisions, the Bench considered that the Government of India along with the appellant, RIL and ONGC had entered into a joint venture agreement whereunder each co-

[11] **2021 (49) GSTL 143 (Tri.-Mumbai)**
[12] **2022 (63)GSTL 351 (Tri.-Mumbai)**
[13] **2022 (64)GSTL 578 (Tri.-Mumbai)**

venturer had its own set of obligations and the responsibilities discharged by each of the co-venturers towards the venture was not by way of services rendered to the Joint Venture but in their own interest in the course or furtherance of the common objective of the joint venture. In the second case of **B.G. Exploration & Production India Ltd.** referred above, the Bench had noticed that the introduction of such like joint venture as under:-

> **"15.** In terms of Article 297 of the Constitution of India, lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone of India, vest in the Union and are to be held for the purposes of the Union. The Government of India took a policy decision to enter into public-private partnerships with private parties, with a view to optimise production of such natural resources. Accordingly, the Government of India issued a Notice Inviting Offers for joint ventures to develop medium sized oil fields in India. Pursuant to the said Notice Inviting Offers, the Government of India entered into contracts with private parties for production of petroleum and the costs and profits were shared between the Government and the private parties as per the formula prescribed and agreed in the Contracts. The purpose of the said Contracts was to obtain capital investment and technical expertise from the private parties to achieve the objective of optimum production. The common objective was to explore, develop and produce the maximum amount of mineral resource for commercial sale."

Considering the facts of that case, it was observed as under:-

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

> **30.** The arrangement in question can also be viewed from another perspective *i.e.* the Appellant had entered into employment contracts on

> behalf of the unincorporated joint venture as the latter was incapable of entering into contracts in its own name. All activities of the unincorporated joint venture are conducted in the name of its constituent members. Unless such an activity is undertaken by a constituent member as an independent service provider for the joint venture for a consideration, there is neither a rendition of service nor can there be any liability to service tax. This position also evolves from paragraph 4.2 of the Circular dated 24-9-2014, wherein it has been clarified that a member of a joint venture may provide support services to the joint venture for a consideration either in cash or in kind, which alone would be leviable to service tax."

10. The principle enunciated in various decisions cited is clear that the activities of exploration of petroleum by an assessee as co-venturer under the Joint Venture Agreement where Government and Private companies under production sharing contract cannot be considered as rendering of any service to the Government of India and therefore, the profit shared amongst co-venturers could not be considered as consideration, which is levialbe to service tax.

11. From the facts of the present case, it is apparent that the appellant had placed bids through joint venture arrangements with different parties. On acceptance of joint-bid by the Government, the parties to Joint Bidding Agreement[14] enter into PSC. On perusal of the Joint Operating Agreement and Production Sharing Contract, it is apparent that one of the Member of UJB is appointed as 'Operator', who is responsible for all kinds of activities related to the allotted block. In this case, the appellant has been appointed as the 'Operator' and is incurring expenses in relation to manpower drilling work arranging for facilities for exploration activities etc. and in lieu thereof, the appellant raises cash calls on non-operators. Such cash calls received as share of expenses cannot be subjected to service

[14] JBA

tax, in view of the decisions referred above. The appellant incurs various expenses on exploration or development of the petroleum asset (i.e. the oil fields or gas fields) or for production of oil and/or gas. If the exploration and development operations fructify into a discovery of commercial fields, production of oil happens. Otherwise, the Block is to be relinquished and the contribution towards exploration and development operations become a sunk cost which is a loss incurred by the participants in proportion to their PI. Thus, the exploration and development costs are nothing but investments in anticipation of future production from the oil field (which is contingent upon the successful discovery of oil and/or gas deposits).

12. Following the earlier precedents and the facts of the present case being in identical situation, the impugned order is liable to be quashed. The appeal is accordingly allowed, with consequential benefits, if any.

[Order pronounced on 21st January, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.