IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75603 of 2015

(Arising out of Order-in-Original No. 11/ST/ADJ/COMMR/DIB/14-15 dated 27.03.015 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh, Milan Nagar, Lane "F", P.O. C. R. Building, Dibrugarh-786003)

M/s. Assam Gas Company Limited **: Appellant**
P.O. Duliajan, Dist. Dibrugarh
Assam-786 602.

VERSUS

Commissioner of Central Excise & Service Tax, **: Respondent**
Milan Nagar, Lane "F",
P.O. C. R. Building, Dibrugarh-786003

APPEARANCE:

Shri Tarun Chatterjee & Mr. Raju Mondal, Advocate
Shri Sneha Das, Consultant for the Appellant
Shri S. K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75472/ 2025

DATE OF HEARING: 12.02.2025
DATE OF PRONOUNCEMENT: 25.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Service Tax Appeal No. ST/75603/2015 has been filed by M/s. Assam Gas Company Ltd (herein after referred as the appellant) against the Order-in-Original No. 11/ST/ADJ/COMMR/DIB/14-15 dated 27.03.015 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh, Milan Nagar, Lane "F", P.O. C. R. Building, Dibrugarh-786003, wherein the Ld. Commissioner has confirmed the demand of

Service Tax of Rs. Rs.1,52,56,361/-, along with interest and imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994.

2. Briefly stated facts of the case are that the appellant is engaged in the business of transmission of natural gas through pipeline network and sale of gas. The appellant has a joint venture (DNP) with Num Aligarh Refinery Ltd. (NRL), having 26% share, Oil India Limited (OIL), having 23% share and the appellant 51% share. As a lead JV partner, the technical and non-technical personnel of the appellant is engaged in execution of the project. In terms of the JV Agreement and the decision of the JV partners, the cost of such personnel is reimbursed to the appellant on actual basis.

2.1. The department considered the reimbursable expenses received by the appellant as 'consideration' towards rendering of the taxable service of 'supply of manpower' and accordingly demanded service tax from the appellant. The appellant was of the view that the cost of the personnel engaged in execution of the project in which the appellant is a lead JV partner, is not 'consideration' under section 67 of the Finance Act, 1994. As the reimbursement was received on actual basis, the appellant was of the view that such amount received was not for provision of any service and therefore, demand of Service Tax on reimbursement is not sustainable.

2.2. A Show Cause Notice dated 16-09-2014 was issued to the appellant demanding Service Tax of Rs. Rs.1,52,56,361/-, for the period April 2009 to March 2014. The said notice was adjudicated and the demand of service tax of Rs. Rs.1,52,56,361/- raised in the notice has been confirmed along with interest and imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994.

3. The appellant submits that submits that it is evident from the Paras (2), page 53 and Para (4) (iv), page 55 of the Show Cause Notice that they have received reimbursement of salary and overhead cost. The appellant submits that such reimbursable amount is not consideration under Section 67 of the Act, furthermore, if at all such reimbursement is taxable, the same is taxable from 14-05-2015 whereas the impugned period is April 2009 to March, 2014.

3.1. The appellant submits that the personnel engaged are the employees of the appellant company and the appellant is paying all salaries etc. to such employees. Only cost of such employees are reimbursed by the JV. The whole arrangement between the appellant and the JV does not fall under the taxable service of manpower supply service as defined under rule 2(g) of the Service Tax Rules.

3.2. The appellant submits that the instant case is squarely covered by the decision of the Hon'ble Apex Court in **COMMISSIONER OF CGST, DELHI SOUTH Versus BOEING INDIA DEFENSE PVT. LTD., 2024 (388) E.L.T. 37 (S.C.) and UNION OF INDIA Versus INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD., 2018 (10) G.S.T.L. 401 (S.C.).**

3.4. The appellant further submits that whole demand is barred by limitation. In the instant case, the Show Cause Notice dated dated 16-09-2014 has been issued by invoking the larger period under proviso to the Section 73(1) of the Act, whereas the activity of the appellant is well within the knowledge the of the respondent when first Show Cause Notice, dated 09-04-2013 was issued. Hence, the whole demand is barred by limitation. The issue squarely covered by the decision of the Hon'ble Supreme Court in **Nizam Sugar Factory Vs. Collector of Central Excise, A.P., 2006(197) E.L.T.465 (SC).**

3.5. Accordingly, the appellant prayed for setting aside the demands and allowing their appeal on merit as well as on limitation.

4. The Ld. A.R. submits that the appellant has been rendering the service of supply of manpower service liable to service tax. He cited the decision of the Hon'ble Supreme Court in the case of Northern

5. Heard both sides and perused the appeal documents.

6. We observe that the issue to be decided in the present appeal is whether Service Tax is payable on reimbursable expenses received by the appellant from the JV partner, considering such reimbursement as 'consideration' for providing service under the category 'Manpower Supply Agency Service'?

6.1. We observe that the appellant has a joint venture (DNP) with Num Aligarh Refinery Ltd.(NRL),having 26% share , Oil India Limited(OIL), having 23% share and the appellant 51% share. As a lead JV partner, the technical and non-technical personnel of the appellant is engaged in execution of the project. In terms of the JV Agreement and the decision of the JV partners, the cost of such personnel is reimbursed to the appellant on actual basis. As the appellant is the Lead Partner with 51% share, we observe that in this case the service rendered by the appellant is not for any other company but to themselves. Thus, there is no service provider and service receiver relationship exists in the transaction. We observe that the personnel engaged are the employees of the appellant company and the appellant is paying all salaries etc. to such employees. Only cost of salary of such employees are reimbursed by the JV on actual basis. Thus, we observe that the whole arrangement between the appellant and the JV does not fall under the taxable service of manpower supply service as defined under rule 2(g) of the Service Tax Rules. Accordingly, we hold that the reimbursements received by the appellant cannot be considered as 'consideration' towards any taxable service.

6.2. We find that the instant case is squarely covered by the decision of the Hon'ble Apex Court in **COMMISSIONER OF CGST, DELHI SOUTH Versus BOEING INDIA DEFENSE PVT. LTD., 2024 (388) E.L.T. 37 (S.C.).** For ready reference, the portion of the said decision is reproduced below:

> *2. Learned Counsel appearing for the appellant very fairly submitted that the issues which arise in these appeals are covered by the judgment of this Court in Union of India & Anr. v. Intercontinental Consultants and Technocrats Private Limited (2018) 4 SCC 669 = 2018 (10) G.S.T.L. 401 (S.C.) = [2018] 91 taxmann.com 67/66 GST 450 (SC) and, therefore, an appropriate order may be passed in these appeals. 3. In the circumstances, the Civil Appeals are dismissed.*

6.3. We also rely upon the decision of the Hon'ble apex Court in the case of **Union of India & Anr. v. Intercontinental Consultants and Technocrats Private Limited (2018) 4 SCC 669 = 2018 (10) G.S.T.L. 401 (S.C.) = [2018] 91 taxmann.com 67/66 GST 450 (SC)** *and* contended that that such reimbursable amount is not consideration under Section 67 of the Act, furthermore, if at all such reimbursement is taxable, the same is taxable from 14-05-2015 whereas the impugned period is April 2009 to March,2014. The relevant part of the said decision is reproduced below:

> *29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find*

> *that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature.*

6.4. We observe that the Ld. A.R relied upon the decision of the Hon'ble Apex Court in the case of Northern Operating Systems Pvt. Ltd. vs C.C., C.E. & S.T., Bangalore (Adjudication) 2022(61) G.S.T.L. 129(S.C.). We observe that the facts and circumstances of the present case on hand is different from the facts and circumstances of the case of Northern Operating Systems Pvt. Ltd. In that case the appellant has been sending the manpower to their subsidiary companies abroad and service tax was demanded on the consideration received under the category of 'import of service', where as in the present case the appellant as a Lead JV partner was sending their technical and non-technical personnel of the appellant is engaged in execution of the project. In terms of the JV Agreement and the decision of the JV partners, the cost of such personnel is reimbursed to the appellant on actual basis. Thus, we observe that the facts are distinguishable and case the case law relied upon by the Ld. A.R. is not applicable to this case.

6.5. We also observe that the whole demand is barred by limitation. In the instant case, the Show Cause Notice dated 16-09-2014 has been issued by invoking the larger period under proviso to the Section 73(1) of the Act, whereas the activity of the appellant is well within the knowledge the of the respondent when first Show Cause Notice, dated 09-04-2013 was issued. Hence, we hold that the whole demand is barred by limitation. The issue squarely covered by the decision of the Hon’ble Supreme

Court in **Nizam Sugar Factory Vs. Collector of Central Excise, A.P., 2006(197) E.L.T.465 (SC).**

6.6. In view of the above discussion, we hold that the demand of service tax confirmed in the impugned order is not sustainable on merits as well as on limitation. Accordingly, we set aside the same. As the demand it self is not sustainable, the question of demanding interest and imposing penalties does not arise. Accordingly, we set aside the same.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 25.02.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP