**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**ARBITRATION PETITION NO. 1569 OF 2014**

Great Offshore Ltd. ….Petitioner

V/s.

Reliance Industries Ltd. ….Respondent

Mr. Shanay Shah, Advocate for Petitioner (in liquidation);
Mr. Mahendhar Aithe, Company Prosecutor present;
Dr. Milind Sathe, Senior Advocate a/w Mr. Rohan Shah, Mr. Rishit Badiani, Mr. Ketan Dave and Ms. Swati Jain i/b A. S. Dayal and Associates for Respondent.

**CORAM : K.R.SHRIRAM, J.**
**DATED : 8th FEBRUARY 2021**

**P.C. :**

1 Heard Mr. Sathe and Mr. Shah and also perused records and proceedings and impugned award.

2 Petitioner (now in liquidation) had in the Arbitration proceedings claimed from Respondent, reimbursement of Service Tax paid by it under protest to the Service Tax Authorities in respect of three Charter Parties between petitioner and respondent.

3 The Arbitral Tribunal passed an Award dated 19th April 2014 (impugned in this Petition) holding that the issue - whether the Service Tax under Section 65(105)(zzzzj) of the Finance Act 1994, for the period 16th May 2008 to 31st August 2009, is payable in respect of the three Charter Parties for i) Malaviya Twenty Nine, ii) Malaviya Eighteen and iii) Malaviya

Twelve (hereinafter 'Service Tax Liability') has to be decided by the Appropriate Authorities.

4 Accordingly, the Arbitral Tribunal granted liberty to petitioner to take appropriate steps in that regard, including filing appropriate proceedings against respondent for seeking reimbursement, subject to the outcome of the proceedings before the Appropriate Authority with respect to the Service Tax Liability. The Arbitral Tribunal had also directed that legal costs, if any, incurred by petitioner for prosecuting the matter before the Appropriate Authorities would be reimbursed by respondent.

5 The Hon'ble Supreme Court in the case of ***Great Eastern Shipping Co. Ltd. Vs. State of Karnataka & Ors.***, 2020 (3) SCC 354, has recently considered applicability of sales tax to a Charter-party. It is the Respondent's case that the ratio in *Great Eastern Shipping Co. Ltd. (supra)* applies to the Charter Parties executed between petitioner and respondent. Therefore, according to respondent, such transactions are not rendering of 'service' and hence would not be exigible to payment of Service Tax.

6 In view of the liberty granted to petitioner by the Arbitral Tribunal, petitioner had filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) being Appeal No.ST/85693/2016 (the said appeal). Since petitioner went into the liquidation, no further steps were taken by petitioner and, therefore, pursuant to an order dated 13th June 2019, the said appeal abated as per provisions of Rule 22 CESTAT (Procedure) Rules 1982. The official liquidator of petitioner shall apply

within 4 weeks from today to CESTAT for restoration of the said appeal and take further steps to seek refund of service tax from the appropriate authorities, as per the liberty granted by the Arbitral Tribunal. CESTAT shall consider the restoration application of official liquidator of petitioner and also dispose the appeal in accordance with law. I would hasten to add I have not made any observations on the merits of the appeal filed by petitioner or the stand taken by respondent before this court, as to whether service tax is applicable to a charter party.

7 Since petitioner is in liquidation and as submitted by Mr. Sathe that it is also in respondent's interest that the service tax liability is adjudicated before the appropriate authority, Official Liquidator of petitioner shall appoint an advocate whose fees, costs and expenses shall be incurred by respondent. Respondent shall either pay the advocates' fees, costs etc., directly or put the official liquidator in funds to defray those expenses. Respondent is at liberty to suggest suitable lawyer since as stated by Mr. Sathe, it is also in respondent's interest that the said appeal is restored and adjudicated in favour of petitioner in liquidation.

8 Arbitration petition is accordingly disposed with liberty to the Official Liquidator of petitioner to take such steps as advised, in case the stand taken by respondent as noted in paragraph 5 above, is not upheld.

9 No order as to cost.

**(K.R.SHRIRAM, J)**

Meera Jadhav