

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 37 OF 2006

International Association of Drilling Contractors ... Petitioners
(South Central Asia Chapter) and Anr.

Versus

The Union of India & Ors.

...Respondents

Mr. D. B. Shroff, Senior Advocate with Mr.Prasad Paranjape and
Mr.Sanjeev Nair i/b. Lumiere Law Partners, for the Petitioners.

Ms. P. S. Cardozo with Mr.Satyaprakash Sharma, for Respondent Nos.1
to 6.

Mr. Jitendra B. Mishra with Mr.Ashutosh Mishra with Mr.Satyaprakash
Sharma, for Respondent No.i.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATED: 21 July, 2023

P.C.

1. The petitioner an association of drilling contractors is before the Court in the present proceedings assailing the Circular No. 80/10/2004-ST dated 17 September 2004 (Exhibit A) issued by the respondents interalia on service tax leviable on "survey and exploration of minerals". The petitioners have contended that by virtue of the impugned circular the services of prospecting of minerals is now made to fall within the ambit of taxable entry under Section 65(105)(zzv) of the Finance Act,1994.

2. The petitioner has contended that its members were awarded contracts for drilling work by ONGC and Reliance Industries Ltd. which in no manner can fall within the ambit of “survey and exploration of minerals” as defined. The contention is that by virtue of the circular, the ambit of the provision itself is sought to be expanded and which is not the intention of the legislature from the plain reading of the provision. There are other issues as urged, including on the interpretation of the provision in view of the subsequent legislative amendments made in the year 2007 and 2008 respectively by the relevant Finance Acts of the said years.

3. Mr.Shroff, learned Senior Counsel for the petitioners has fairly stated that with effect from the year 2007 the members of the petitioners are being taxed under the heading ‘mining services’ and accordingly Service tax is being paid. He has also fairly pointed out that only one member of the petitioner namely M/s. Transocean Offshore International Ventures Ltd. along with its group entities namely Transocean Discoverer 534 LLC and M/s Transocean Offshore Deepwater Drilling Inc., was issued a common show cause notice dated 29 May 2008 which the petitioners contend, was totally illegal considering the contentions as raised by the petitioners not only on law but also on facts as seen from the contents of the show cause notice. One of the contentions as urged by Mr.Shroff is in regard to the allegations in the show cause notice as made against the said member in paragraph 15 (internal page 28 of the show cause notice).

Mr.Shroff has submitted that as the present proceedings were pending and possibly under the impression that the issues which are raised in the petition are also the issues, which the petitioner would raise in the reply to the show cause notice, the show cause notice was not replied. Ms.Cardozo, learned Counsel for the respondents would also submit that the show cause notice was not taken forward by the department. We note that there was no embargo for the department to adjudicate the show cause notice.

4. Be that as it may, the proceedings on the above conspectus are listed before us for final hearing.

5. The prayers in the petition which would include the prayers as amended (indicated in italics), read thus:-

“(a) that this Hon’ble Court be pleased to declare that services of charter hire of vessels or equipments with crew for drilling are not liable to service tax under the category of “survey and exploration of minerals” or “site formation” whether rendered in designated areas for the purposes of levy of service tax or beyond;

(b) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to call for the records of the Petitioners’ case and to go into the legality and propriety thereof and to quash and or set aside the said impugned Circular No. 80/10/2004-ST dated 17th September, 2004 (being Exhibit “A” hereto) *and show cause with demand notice F.No.DGCEI/MZU/I & IS ‘C’/12(3) 34/2005/3807 dated 29.05.2008.*

(c) that this Hon’ble High Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, Order or direction under Article 226 of the Constitution of India to direct the Respondents themselves, their subordinates, servants and agents to forthwith

(i) withdraw and/or cancel the impugned circular No.80/10/2004-ST dated 17th September, 2004 (being Exhibit “A” hereto) *and show cause with demand notice F.No.DGCEI/MZU/I & IS ‘C’/12(3) 34/2005/3807-8-9 dated 29.05.2008.*

(ii) to refrain from taking action for the recovery of service tax pursuant to and/or in implementation of and/or in furtherance of the impugned circular No.80/10/2004-ST dated 17th September, 2004 (being Exhibit “A” hereto); *and show cause with demand notice F.No.DGCEI/MZU/I & IS ‘C’/12(3) 34/2005/3807-8-9 dated 29.05.2008*

(d) that the hearing and final disposal of the Petition the Respondents themselves, their servants and agents be restrained by an order and injunction of this Hon’ble court from taking any action for the recovery of service tax pursuant to and/or in implementation of and/or in furtherance of the impugned circular No.80/10/2004-ST dated 17th September, 2004 (being Exhibit “A” hereto) *and show cause with demand notice F.No.DGCEI/MZU/I & IS ‘C’/12(3) 34/2005/3807-8-9 dated 29.05.2008.*

(e) For ad-interim reliefs in terms of prayer (d) above;

(f) For such further and other reliefs as this Hon’ble Court be deem fit in the facts and circumstances of the case.”

6. We may note that by an order dated 21 March 2006 the Division Bench of this Court had admitted the petition, however, rejecting the prayers for interim reliefs. It was clarified that any action taken for recovery of service tax from the petitioner shall be subject to the final decision in the writ petition. We may observe that except one member as noted by us hereinabove, the department also has not issued any show cause notice for almost 17 years to any of the petitioner’s members and the position as pointed out by Mr.Shroff that the petitioners are paying service tax being classified under ‘mining services’, has continued to operate. In such circumstances as to whether we should undertake the

adjudication of the present proceedings any further, is the question, more particularly considering that the petitioner is an association of persons being a society registered under the Society Registration Act, 1860 who had filed this petition to espouse a common cause in relation to validity of the impugned Circular dated 17 September 2004.

7. We have perused the opposition to this petition on behalf of Union of India in the reply affidavit as also the supporting affidavit filed by respondent No.7 – Oil and Natural Gas Commission who according to the petitioners had awarded the drilling contract in question.

8. Having heard Mr. Shroff, learned Senior Counsel for the petitioners, Ms. Cardozo, learned Counsel for Respondent Nos. 1 to 6 and Mr. Mishra, learned Counsel for respondent No. 8 - Directorate General of Central Excise Intelligence, we are of the opinion that the members of the petitioners are required to be permitted to urge all their contentions before the Departmental Authorities in the event the occasion so arises. We are also of the opinion that so far no show cause notices are issued to the members of the petitioner except as recorded by us in the case of M/s. Transocean Offshore International Ventures Ltd., a copy of which is annexed at Exhibit H. Thus, neither any proceedings are initiated nor any proceedings in regard to the other members are pending before the department. The circular as challenged in the petition, was issued almost 19 years back. The department has also not taken any action and the members of

petitioner since 2007 are paying service tax under the category of 'mining services'.

9. In the above circumstances, in our opinion, in a petition which is filed by the association, it may not be appropriate for us to examine the validity of the impugned circular. The same is already subject matter of contention in the show cause notice issued to one of the petitioner's member M/s. Transocean Offshore International Ventures Ltd., and it would be for such member of the petitioner, who would be entitled to raise all contentions in regard to the circular by raising all permissible contentions in law and on facts. If such contentions are raised, certainly they fall for consideration of the Designated Officer who would, if at all, is to adjudicate the show cause notice.

10. In the light of the above discussion, we of the opinion that the present petition would be required to be disposed of in terms of the following order:-

(I) All contentions of the members of the petitioner on the issue as raised in the present petition are expressly kept open to be agitated, before the Departmental Authorities, in the event any need so arises.

(II) Insofar as M/s. Transocean Offshore International Ventures Ltd. and its group entities are concerned, all contentions of such members of the petitioner as urged in the present petition including the contention in regard to paragraph 15 of the show cause notice dated 29 May 2008 on law and facts, are expressly

kept open, including to raise a contention on the issue of belated adjudication of the show cause notice.

(III) All contentions of the Department on all issues are also expressly kept open.

11. The petition stands disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)