SUPREME COURT OF INDIA
Union of India
v.
Indian National Shipowners Association
DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.
CIVIL APPEAL NO. 10227 OF 2010
DECEMBER 1, 2010

JUDGMENT

1. Leave granted.

2. This appeal is directed against the judgment and order dated 23-3-2009 [*Indian National Shipowners' Association* v. *Union of India* [2009] 19 STT 408 (Bom.)] passed by the Division Bench of the Bombay High Court setting aside and quashing the notices issued by the appellant herein to the Members of the respondent Association by holding that the entry contained in section 65(*105*)(*zzzy*) of the Finance Act, 1994 does not include services provided by the Members of the respondent-Indian National Shipowners' Association.

3. Counsel appearing for the appellant has submitted before us that such services which are provided by the Members of the respondent No. 1 Association have now become subjected to the payment of service tax by virtue of the amendment brought in section 65(*105*) by way of amendment in the Finance Act, 1994 with effect from 16-5-2008 by inserting a fresh entry namely section 65(*105*)(*zzzzj*). Counsel submits that the period relevant in the present case is the period from 1-6-2007 to 15-5-2008. He seeks to contend that although the aforesaid amendment was brought in subsequently yet by taking recourse to the provisions of section 65(*105*) Entry No. zzzy, the Members of the respondent Association is still liable to pay such service tax. He has drawn our attention to Entry No. zzzy which provides that any services provided to any person, by any person in relation to mining of mineral, oil or gas would be taxable.

4. Counsel appearing for the respondent No. 1 as also respondent No. 3 Oil and Natural Gas Commission have submitted that the aforesaid interpretation sought to be given by the counsel appearing for the appellant is misplaced for the simple reason that the services rendered by the Members of the respondent No. 1 cannot be said to be any services in relation to mining of mineral, oil or gas. They have also drawn our attention to the nature and scope of work which was required to be rendered by the Members of the respondent Association and which are specified in the Schedule B-II (page 200 of the Paper Book) read as under :

"Scope of work for AHTSs (not less than 60 T BP), PSVs & OSVs

(A) To carry out towing and anchor handling operations in Offshore in case of AHTSs.

(B) To carry men and material between base and offshore installations, as well as between offshore installations only where such facilities are available.

(C) To carry out stand by and rescue operations in offshore, if required.

(D) To assist in exigencies arising in offshore.

(E) To carry out routine surveillance in offshore for safety and security reasons.

(F) Standby at SBM tankers in offshore.

(G) To assist in nmooring (*sic*) daughter vessel to mother vessel and securing to SBM in case of AHTSs.

(H) To carry out any other field work which may be within the natural capabilities of the chartered vessel, as instructed by base/field Incharge for ONGC's own operations and that of JV/NELP partners.

(I) The Vessel should available for Offshore work round the clock, 24 hours, a day during the term of the Charter Party.

(J) The above work shall always be performed within the vessel's natural capabilities and within safe parameters."

5. The High Court has held that the aforesaid nature of work to be carried out by the members of the respondent No. 1 cannot be said to be a work in relation to mining of mineral, oil or gas.

6. In the context of the aforesaid submission of the counsel appearing for the parties, we have considered the aforesaid provisions and the nature of work that was required to be carried out by the Members of the respondent Association in terms of the contract entered into by them with the ONGC. None of the aforesaid entry in the Schedule could be strictly said to be a service rendered in relation to mining of mineral, oil or gas. Therefore, we find justification in the findings arrived at by the High Court to the aforesaid extension. The nature of work which are set out in the Schedule at P. 200 of the Paper Book cannot be said to be even remotely connected and included within the ambit of the aforesaid expression as found in section 65(*105*) Entry No. zzzy and, therefore, we affirm the order of the High Court to the aforesaid extent by looking into the facts in issue only. We, however, leave the question of law which has been decided by the High Court open to be considered at length in an appropriate case.

7. Needless to state that it shall be open to the appellant to call for documents from the Members of the respondent No. 1 Association or from the ONGC in order to ascertain whether any of the Members of the Association is carrying out any other duties and responsibilities other than what is mentioned in the aforesaid Schedule so as to ascertain whether or not they are liable to make payment of service tax.

8. In terms of the aforesaid observations and directions, the appeal is disposed of.