CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 58089 OF 2013

[Arising out of the Order-in-Original No. 42-44/GB/2013 dated 15/03/2013 passed by The Commissioner, Service Tax, Delhi, New Delhi – 110 002.]

M/s Western Geco International Ltd., **......Appellant**
14th Floor, Tower – C, Building No. 10,
DLF Cyber City, Phase – II,
Gurgaon – 122 002.

Versus

The Commissioner, **....Respondent**
Service Tax Commissionerate,
IAEA House, 17-B, I.P. Estate, M.G. Marg,
New Delhi – 110 002.

APPEARANCE:

Shri V. Lakshmikumaran, Shri Kunal Aggarwal and Ms. Shagun Arora, Advocates for the appellant.
Shri Rajpal Sharma, Special Counsel for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51707/2025

DATE OF HEARING : 15.10.2025.
DATE OF DECISION : 12.11.2025

P.V. SUBBA RAO

M/s. Western Geco International Ltd. Gurugram[1] Haryana, India, filed this appeal to assail the order-in-original dated 15.03.2013[2] passed by the Commissioner of Service Tax, Delhi demanding service tax with interest and imposing penalties

1. **Western Geco, Gurugram**
2. **impugned order**

on Western Geco Gurugram proposed in three show cause notices. The details are as follows:

Common Order-in-Original	No. 42-44/GB/2013 dated 15.3.2013 ("**Impugned Order**") [**page 181-266 of the Volume-I to appeal paper book**]		
Period of dispute	Total Period - April 2005 to March 2012 ("**relevant period**")		
	For Period April 2005 to February 2010	**For Period April 2010 to March 2011**	**For Period April 2011 to March 2012**
Show Cause Notices	F. No. DGCEI/MZU/I&IS'C/30/56/09/6225/1575 dated 19.10.2010 and Corrigendum issued vide F. No. DGCEI/MZU/I&IS'C/30/56/09/975 dated 11.2.2011 ("**SCN-1**") [**page 1229-1295 of Volume-III to appeal paper book**]	No. D-III/ST/R-II/Western Geco/SCN/43/11/6172 dated 24.10.2011 ("**SCN-2**") [**page 1309-1374 of Volume-III to appeal paper book]**	No. D-III/ST/R-II/Western Geco/SCN/43/11/594 dated 16.1.2013 ("**SCN-3**") [**page 1375-1378 of Volume-III to appeal paper book**]
Demand of Service Tax in dispute	Rs. 343,75,25,308 under proviso to Section 73 (1) of the Finance Act, 1994 ("**Act**")	Rs. 34,56,500 under proviso to Section 73 (1) of the Act	2,05,36,970 under Section 73 (1A) of the Act
	Total = Rs. 346,15,17,778		
Demand of Interest & Penalty in dispute	• Interest under Section 75 of the Act (not quantified) • Penalty of Rs. 343,75,25,308 under Section 78 of the Act • Penalty of Rs. 1,00,000 under Section 77 of the Act [Rs. 10,000 for each ST-3 returns] [**Total penalty of Rs. 343,76,35,308**]	• Interest under Section 75 of the Act (not quantified) • Penalty of 20,000 under Section 77 of the Act [Rs. 10,000 for each ST-3 returns] • Penalty of higher of Rs. 200 per day or 2% per month of Service Tax under Section 76 of the Act [not quantified]	• Interest under Section 75 of the Act (not quantified) • Penalty of 20,000 under Section 77 of the Act [Rs. 10,000 for each ST-3 returns] • Penalty of higher of Rs. 200 per day or 2% per month of Service Tax under Section 76 of the Act [not quantified]
Issue	**Whether service tax is payable on offshore seismic survey (data acquisition) undertaken by the Appellant beyond 12 nautical miles from the Indian landmass.**		

2. **M/s. Western Geco International Ltd., British Virgin Islands**[3] is a company incorporated in British Virgin Islands and it has field offices in Gurugram, Haryana and in Mumbai. Western Geco Gurugram and Western Geco Mumbai had a centralised registration with the Service Tax department in Gurugram. Western Geco BV Islands had entered into contracts with **Oil and Natural Gas Commission**[4] and **Reliance Industries Ltd.**[5] to

3. **Western Geco, BV Islands**
4. **ONGC**

conduct seismic survey of the sea beyond 12 nautical miles from the Indian land mass, analyse the data and submit reports which will help them (ONGC and RIL) in finding and drilling for oil and gas. The survey was conducted using Q-Marine technology of Western Geco BV Islands and it was paid lease charges of US$ 7.5 million per month for the vessel used to conduct the survey. This amount of US$ 7.5 million per month was, according to the contracts, basic charge which was subject to some adjustments, such as, if the price of fuel exceeded a certain value, etc. The basic amount was all inclusive covering several activities including data processing. The cost of data processing was indicated in the contracts as 4% of the basic cost .The cost of other activities was not individually specified.

3. The data was acquisitioned by the vessel surveying the sea and it was processed in the project office of Western Geco in Mumbai. Invoices for the services were issued to ONGC and RIL by the Western Geco, Gurugram which also paid service tax on 4% of the total lease amount being the cost of data processing. No service tax was paid on the remaining 96% of the basic cost which is the issue in dispute in these appeals.

4. Show cause notices were issued which culminated in the impugned order confirming the demands with interest and imposing penalties.

Submissions of the appellant

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5. RIL

5. Shri V. Lakshmikumaran assisted by Shri Kunal Aggarwal and Ms. Shagun Arora, learned counsels for the appellant made the following submissions:

(i) The appellant provided service of survey using Q-Marine technology in the high seas beyond the 12 nautical miles from the Indian land mass. Chapter V of the Finance Act, 1994[6] extends to the whole of India but not beyond and the sea which they had scanned was beyond 12 nautical miles and hence was outside India and therefore, no service tax was payable. Reliance is placed on the following decisions:

a) **Ajay Mishra** versus **Commissioner of Service Tax, Delhi III**[7]

b) Indian Association of Tour Operators versus **Union of India**[8]

(ii) The Finance Act was also extended to specified designated areas of the Continental Shelf and Exclusive Economic Zone[9] of India by Notification No. 1/2002-ST dated 1.3.2002 but the appellant had not rendered services in such designated areas.

(iii) Further, the Finance Act was also extended to installations, structures and vessels in the Continental shelf and EEZ by Notification No. 21/2009-ST dated 7.7.2009 and Notification No. 14/2010-ST dated 27.2.2010. However, as held by Hon'ble Bombay High Court and CESTAT Mumbai in the following decisions, vessels deployed by the appellant to perform data acquisition through seismic survey do not qualify as 'vessels' under the above notifications:

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[6]Finance Act
[7]2023 (386) ELT 310 (Tri-Del.)
[8]2017 (5) GSTL 4 (Del.)
[9]EEZ

a) **Greatship (India) Limited** versus **Commissioner of Service Tax, Mumbai-I**[10]

b) **Reliance Industries Limited vs Commissioner of C.Ex. & ST, LTU, Mumbai**[11]

c) **Commissioner of Central Excise & Service Tax LTU, Mumbai vs Reliance Industries Limited**[12]

(iv) The activities of data acquisition performed outside India are not exigible to service tax under section 66 of the Finance Act.

(v) The Commissioner has, in the impugned order, wrongly drawn analogy from the rules related to import of services which are exigible to service tax under section 66A of the Finance Act and according to which if part of the service is rendered outside India and part is rendered in India, it is deemed to have been rendered in India.

(vi) There is no allegation by the department that the appellant had imported the services and therefore, the rules related to the import of services would not apply.

(vii) Data acquisition and data processing are independent activities and must be treated separately because there is a separate consideration for data processing in the contract.

(viii) The contracts were with Western Geco, BV Islands the appellant Western Geco, Gurugram which is a project office must be treated as a separate person which did not provide any service at all. Hence, no service tax could have been demanded from it.

(ix) Since the services were provided by Western Geco, BV Islands, which is a company incorporated overseas to the clients ONGC and RIL located in India, as per

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10. 2015 (39) STR 754 (Bom.)
11. 2014 (36) STR 820 (Tri-Mumbai)
12. 2016 (45) STR 341 (Tri-Mumbai)

Section 66A of the Finance Act, service tax could only have been demanded from the service recipients.

(x) The officers of Director General of GST Intelligence[13] were appointed as Central Excise officers by Notification No. 7/2004-CE (NT) dated 11.3.2004 and empowered to exercise powers in the whole of India. Since the data acquisition was the activity undertaken beyond India, DGGI officers had no jurisdiction at all to issue the Show Cause Notices.

(xi) The appellant had paid service tax on the data acquisition service also from 27.2.2010 and therefore, the demands for the period April 2010 to March 2011 (SCN-2) and April 2011 to March 2012 (SCN-3) are not sustainable.

(xii) Extended period of limitation was not invokable in the absence of any act of malafide on the part of the appellant. Demand of Rs. 290,98,26,242/- for the period April 2005 to March 2009 is barred by limitation.

(xiii) If the case is decided against the appellant on merits, cum-tax benefit should be extended because the appellant had not collected service tax from RIL and ONGC.

(xiv) Interest is not leviable because the demand itself is not sustainable and for the same reason, the penalties imposed on the appellant are also not sustainable.

(xv) Without prejudice to the above submissions, if the demand is upheld, penalties may be waived under section 80 of the Finance Act.

(xvi) Without prejudice to any of the above submissions, penalty under section 78 for the first SCN should be limited to 50% of the service tax.

(xvii) All three appeals may be allowed and the impugned order may be set aside.

Submissions on behalf of Revenue

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[13]**DGGI**

6. Shri R P Sharma, Learned special counsel for the Revenue vehemently supported the impugned order and submitted as follows:

i) The acquisition of data offshore in deep sea and its processing onshore in Mumbai by the appellant are two components of a single supply as per the contract. It cannot be vivisected into a taxable component and a non-taxable component by the appellant.

ii) The nature of the service must be determined by examining the contracts as a whole reading all the terms and conditions. The contracts will leave no doubt that only a single service was performed of which the data acquisition and data processing were but parts.

iii) The Q Marine technology of the appellant produced sub-surface image of geological surveys to help ONGC and RIL identify and locate oil and gas deposits which was the purpose of all the contracts.

iv) In order to avoid paying service tax on 96% of the total value, the appellant resorted to misconstruction of the taxable services provided by them to ONGC and RIL.

v) Even if the activity of data acquisition offshore is independent of data processing onshore, the data acquisition also falls under section 65(104a) as 'survey and exploration of mineral' which is a taxable service. Therefore, service tax has to be paid.

vi) There was no service at all in acquiring data as it was self-service of the appellant. Provision of service needs transaction between two persons at least- one who carries out activities and the other for whom the activities are carried out. Until the work of data acquisition is carried out in the sea, these were merely activities for the appellant only and they cannot be called termed service because ONGC and RIL did not receive any service.

vii) Even if the data acquisition is considered as a service, it was completed only when the tapes containing the data were given to ONGC/RIL which happened in Mumbai.

viii) The impugned order may be upheld and all appeals may be dismissed.

Findings

7. To decide this appeal, we must examine the principles of construction of taxing statutes, interpret relevant provisions of Finance Act and Rules accordingly and apply them to the facts of this case.

8. Tax is a compulsory exaction of money by the Government and the taxpayer gets nothing in return. Fee, even if imposed by a statute, has a broad correlation with a service rendered but tax has no such relationship with any service.

9. "*No taxation without representation*" was one of the most important slogans of the American independence movement with the people refusing to pay taxes except what their own elected representatives mandated. Likewise, in France Article 14 of the Declaration of Rights of Man, 1789 passed by the National Assembly of France, August 26, 1789, states "*All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.*"

10. This principle is also part of Constitution of India and it is laid down that '*No tax shall be levied or collected except by authority of law'* (Article 265 of the Constitution of India). Therefore, no collection of tax is permissible except by the authority of law. It has further been held that "In terms of Article 265, all acts relating to the imposition of tax providing, *inter alia,* for the point at which the tax is to be collected, the rate of tax as also the recovery must be carried out in accordance with law"[14].

11. The power to levy taxes is distributed between the Union and States in List I and List II of the Seventh Schedule of the Constitution. Lists I & II are mutually exclusive and there is no overlap insofar as the power to levy taxes are concerned. For instance, the power to levy "*Taxes on income other than agricultural income*" (List I Entry 82) is with the Union while the power to levy "*Taxes on agricultural income*" (List II Entry46) is with the States. Similarly, the power of the States to levy "*Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I*" (List II Entry54) and the power of the Union to levy "*Taxes on the sale or purchase of newspapers and on advertisements published therein"* (List I entry 92) and to levy "*Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."* (List I entry 92A) are mutually exclusive. The only exception is the power to

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14. G.P. Singh Principles of Statutory Interpretation, 15th Edition pg. 614-615 citing Corp Bank versus Saraswati Abharansala, (2009) 1 SCC540 para 19.

levy Goods and Services Tax which is both with both the Union and the States(Article 246A).The power to levy service tax was not specifically listed in either of the lists and hence it vests with the Union as 'residuary power' under Entry 97 of List I.

12. If there is a charge of tax but it has not been paid, the remedies available to the State to both to re-determine the tax and to recover it are also provided for in the law prescribing the procedures and limitations. As held in **Corp Bank** versus **Saraswati Abharansala,** Article 265 of the Constitution requires not just the charge but even the procedures to recover taxes should be as per the law.

13. The components of levy of any tax are (a) the taxable event which makes the tax payable; (b) the person or goods on which the tax or duty is levied;(c) the person liable to pay the tax; (d) the rate at which such tax is imposed; and (e) the measure or value on which the tax is to be computed. These constitute the charge of the tax. In **Govind Saran Ganga Saran** versus **CST**[15], the Supreme Court held as follows:

> "6. The components which enter into the concept of a tax are well-known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness ill the legislative scheme defining any of those components of the levy will be fatal to its validity."

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15. (1985) 155 ITR 144 (SC)

14. The law on taxation laid down by a series of judicial decisions in this regard have been neatly summarised by Justice GP Singh in *Principles of Statutory Interpretation,*[16] as follows. There are three components of taxing statute, *viz,* subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the Legislature.

15. The taxing statute also provides for assessment of tax, enforcement of the law and remedies for determination of the tax which escaped assessment or recovery of the assessed tax which has not been paid, interest, penalties, etc. These constitute the machinery provisions of the taxing statute.

Taxable event

16. The event whose occurrence makes the tax payable as per law is the 'taxable event'. For example, earning of income (income tax), manufacture of goods (excise duty), import or export of goods (customs duty), sale of goods (sales tax), purchase of goods (purchase tax), rendering of a service (service tax). The charging section of a taxing statute spells out the taxable event. If the taxable event does not occur, there can be no tax.

Person responsible to pay tax

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16. G.P. Singh Principles of Statutory Interpretation, 15th Edition pg. 614-615 citing State of Kerala vs Alex George, AIR 2005 SC 1224: (2005), Govind saran Ganga Saran vs CST AIR 1985 SC 1041, Manthuram Agrawal vs State of Madhya Pradesh, AIR 2000 SC 109, p113

17. The charge of tax can be on a person or on goods. If the charge is on the goods (for example customs duty levied under section 3 of the Act), the owner has to pay the tax. If the ownership of goods changes before the duty is paid, the liability to pay also travels along with the goods. If imported goods are sold before crossing the customs frontiers, for instance, the buyer of the goods will have to pay Customs duties and clear the goods. If the goods are confiscated, their ownership shifts to the Government and so will be the liability to pay duty on them and if the confiscated goods are allowed to be redeemed (on paying fine), the liability to pay duty shifts to the person who redeemed the goods.

18. Usually, the person responsible for the taxable event has to pay the tax (seller in case of sales tax, buyer in case of purchase tax, etc.) but sometimes for administrative convenience, to reduce cost of collection or to improve collection of the tax, the law itself makes someone else responsible to pay it in full or in part (tax deductor in case of income tax, etc.). If the law requires tax to be paid by a person, only that person will be responsible to pay the tax and it cannot be demanded from anyone else.

Computation of the tax

19. Computation of tax is based on the rate of tax and the measure of tax (value, quantity, capacity, etc.) on which it must be calculated. If there is a mechanism for computation of tax in the law but there is no clear charge of tax on that event, no tax can be charged at all. For example, before 2012, providing a

'taxable service' attracted levy of service tax under Chapter V of Finance Act. 'Taxable service' was defined under various clauses of section 65(105) of that Act and new clauses were added from time to time bringing more services within the net of service tax. From 1.6.2007, a new clause (zzzza) was introduced levying service tax on 'works contract services', i.e., in contracts where services were rendered along with supply or deemed supply of goods.

20. Before 1.6.2007, if services under various clauses of section 65(105) have been rendered along with supply of goods, exemption notifications were issued by the Government to abate the value of goods in such works contracts so that only the service component of the contract got taxed. Thus, there was a mechanism in law to determine the value of the services by excluding the value of goods. The dispute before the Hon'ble Supreme Court in **Commissioner of Central Excise & Customs, Kerala** versus **Larsen and Toubro**[17]was the validity of such levy. Finding that before 1.6.2007, 'works contract' (services rendered along supply or deemed supply of goods), was not included as a taxable service at all, the Hon'ble Supreme Court, held there was no charge of service tax on such services and therefore, the exemption notifications providing abatement were not relevant. **Thus, although there was a method of calculation of service tax, since there was no charge, service tax could not be charged.**

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17. 2015 (39) S.T.R. 913 (S.C.)

21. A contrary question where the charge of service tax was not in doubt but the mechanism for determining the tax was under dispute was decided by the Hon'ble Delhi High Court in **Suresh Kumar Bansal** versus **Union of India**[18]**.** The petitioner, a builder, therein had entered into composite contracts for rendering services, supply or deemed supply of goods and also including the value of land. The High Court held that whilst Rule 2A of the 'Determination of value of taxable services Rules' provided for a mechanism to ascertain the value of services in a composite works contract involving services and goods, it did not cater to determination of value of services in case of a composite contract which also involves sale of land and accordingly set aside the demand of service tax. **Thus, although the charge was not in doubt, the demand was set aside on the ground that there was no mechanism to compete the tax.**

Determination and recovery of tax/duty which escaped assessment

22. If a tax is payable and some tax escapes assessment, it can be determined and recovered as per the relevant legal provisions and within the limitations therein and not beyond.

23. It is said that "*In fiscal legislation a transaction cannot be taxed on any doctrine of "the substance of the matter" as distinguished from its legal signification, for a subject is not liable*

18. 2016 (43) S.T.R. 3 (Del.)

to tax on the supposed "spirit of the law" or "by inference or by analogy"[19].

24. In short:

(a) tax/duty can be levied and collected only if there is a charge;
(b) tax/duty can be levied and collected only if there is method for computing it;
(c) tax/duty can be levied and collected only from the person who has to pay it;
(d) All acts relating to imposition of tax, point at which tax is to be collected, rate of tax and recovery must also be carried out in accordance with law.
(e) Tax cannot be levied or collected otherwise.
(f) If any tax escapes assessment, it can be recovered only as per the remedy available in law.
(g) Interest is payable and penalties are imposable also as per the law and not otherwise.

Sections relevant to this appeal and their application to the facts
Taxable event in this case

25. The first essential element to levy and collect a tax is the occurrence of the 'taxable event'. According to the Revenue, in this case, the taxable event had occurred and tax was payable. The appellant does not dispute that the nature of service rendered was covered by the charging section but contends that since it had taken place outside the taxable territory, i.e., in areas to which the Finance Act did not extend, the 'taxable event' had not taken place.

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19. G.P. Singh Principles of Statutory Interpretation, 15th Edition pg. 618 citing IRC v Duke of Westminister, (1936) 1, pp 19, 24 (HL)

26. The Finance Act extended to the whole of India except the State of Jammu and Kashmir. The charging sections for service tax applicable during the relevant period were section 66 (forward charge) or 66A(reverse charge) of the Finance Act. These read as follows:

> **66. Charge of service tax** – There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses (*a*), (*d*), (*e*), (*f*), (*g*,) (*h*), (*i*), (*j*),(*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), (*w*), (*x*), (*y*), (*z*), (*za*), (*zb*), (*zc*), (*zh*), (*zi*), (*zj*), (*zk*),(*zl*), (*zm*), (*zn*), (*zo*), (*zq*), (*zr*), (*zs*), (*zt*), (*zu*), (*zv*), (*zw*), (*zx*), (*zy*), (*zz*), (*zza*), (*zzb*), (*zzc*), (*zzd*), (*zze*), (*zzf*), (*zzg*), (*zzh*), (*zzi*), (*zzk*), (*zzl*), (*zzm*), (*zzn*), (*zzo*), (*zzp*), (*zzq*), (*zzr*), (*zzs*), (*zzt*), (*zzu*), ***(zzv),***(*zzw*), (*zzx*), (*zzy*), (*zzz*), (*zzza*), (*zzzb*), (*zzzc*), (*zzzd*), (*zzze*), (*zzzf*), (*zzzg*,) (*zzzh*), (*zzzi*), (*zzzj*), (*zzzk*), (*zzzl*), (*zzzm*), (*zzzn*), (*zzzo*), (*zzzp*), (*zzzq*), (*zzzr*), (*zzzs*), (*zzzt*), (*zzzu*), (*zzzv*), (*zzzw*), (*zzzx*), (*zzzy*), (*zzzz*), (*zzzza*), (*zzzzb*), (*zzzzc*),(*zzzzd*), (*zzzze*), (*zzzzf*), (*zzzzg*), (*zzzzh*), (*zzzzi*), (*zzzzj*), (zzzzk), (zzzzl), (zzzzm), (zzzzn), (zzzzo), (zzzzp),(zzzzq) (zzzzr) (zzzzs) (zzzzt),(zzzzu), (zzzzv) (zzzzv) and (zzzzw) of clause (105) of section 65 and collected in such manner as may be prescribed.
>
> **66A.Charge of service tax on services received from outside India-**
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> (1) Where **any service specified in clause (105) of section 65 is**-
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>> (a) **provided or to be provided by a person** who has established a business or has a fixed establishment from which the service is provided or to be provided or **has his permanent address or usual place of residence, in a country other than India**, and
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>> (b) **received by a person** (hereinafter referred to as the recipient) **who has his place of business**, fixed establishment, permanent address or usual place of residence, **in India**, such service shall, for the purposes of this section, be taxable service, and such taxable service **shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply**:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.— **A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country**.

Explanation 2.—**Usual place of residence**, in relation to a body corporate, means the place **where it is incorporated or otherwise legally constituted.**

27. Section 66 of the Finance Act levied service tax at the rate of 12% of the value of the taxable services provided. The term 'taxable service' was defined under various clauses of section 65 (105) and the service which has been provided was 'geological survey for oil' covered by clause (zzv) of section 65 (105) and it reads as follows:

Section 65 : in this Chapter, unless the context otherwise requires,- (105) 'taxable service' means any service provided or to be provided,-
…..

(zzv) to any person, by any person, in relation to survey and exploration of mineral;

The expression 'survey and exploration of mineral' was defined in clause (104a) of section 65 as follows:

(104a) " survey and exploration of mineral" means geological, geophysical or prospecting, surface or sub-surface surveying or map-making service, in relation to location or exploration of deposits of mineral, oil or gas;

28. The case of the appellant is that since the service was provided beyond the territorial waters of India – in India's Exclusive Economic Zone- to which the Finance Act did not extend- no service tax was payable. It is also the contention of the appellant that the provisions of Chapter V of the Finance Act were extended to specific designated areas of the Continental Shelf and the EEZ of India by notification no. 1/2002-ST dated 1.3.2002 but the appellant had not rendered any services in such designated areas.

29. Further, the provisions of Chapter V of the Finance Act were also extended to installations, structures and **vessels** in the Continental Shelf and EEZ of India by Notification No.21/2008-ST dated 7.7.2009 and Notification No. 14/2010-ST dated 27.2.2010 but the seismic survey vessels deployed by the appellant do not qualify as vessels in terms of the aforesaid notifications. Reliance is placed on:

i) **Greatship (India) Limited** versus **Commissioner of Service Tax, Mumbai-I**[20]
ii) **Reliance Industries Limited** versus **Commissioner of C.Ex. & ST, LTU, Mumbai**[21]
iii) **Commissioner of Central Excise & Service Tax LTU, Mumbai** versus **Reliance Industries Limited**[22]

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20. 2015 (39) STR 754 (Bom.)
21. 2014 (36) STR 820 (Tri-Mumbai)
22. 2016 (45) STR 341 (Tri-Mumbai)

30. The appellant had paid service tax on 4% of the total value of the contracts received for data analysis done in the Project office of Western Geco in Mumbai which was clearly within India. The dispute is regarding the remaining 96% of the total value of contracts on which the appellant had not paid service tax. Learned counsel for the appellant also contended that no service tax was payable at all since the service was provided by Western Geco BV Islands which was incorporated at a place outside India.

31. In paragraph 30 of the impugned order, the Commissioner rejected the submission of the appellant that it was rendering the services outside the territorial waters of India and held that it did not provide any services to the ONGC(the service recipient) outside Indian territorial waters. He held that the service was provided in India when the processed data tapes and reports were provided to ONGC and only a part of this service, i.e., the data acquisition activity was done outside the territorial waters of India. He further recorded that the title of the data tapes containing the raw data had not passed to ONGC and it only received the tapes and passed them back to the appellant for converting it into a geological sub-structure at the data processing centre. He further observed that it is clear that there was no relation between the supply of raw data tapes and payment of monthly lease rates. The service provided by the appellant begins with detailed planning at the data processing centre of the appellant in Mumbai, continues through the acquisition of raw data and finally ends after the data is

processed reservoir image is provided to the ONGC. It is thus, according to the Commissioner, a single service which cannot be vivisected by the appellant into a taxable component of data processing (4% of the total value) and a non-taxable component of the rest of the service (96% of the total value).

32. We proceed to examine the nature of the contracts entered into by Western Geco with ONGC and RIL. We will discuss, as an example, one of them- Contract No. MR/WOB/MM/GP/QML/SC/ 26/2005/EB-2091 for 'Long term leasing of Q-Marine technology in Indian offshore during 2005-2006 and 2006-2007 between the ONGC and Western Geco International Ltd., BV Islands. This contract is placed at page 270 of Volume 1 of the paper book filed by the appellant and learned counsel for the appellant had taken us through various clauses of this contract. Other contracts with ONGC and RIL are similar to this contract.

33. The preamble of the contract states that ONGC was desirous of getting executed the 3D seismic data acquisition and processing using Q marine technology and that the Contractor (Western Geco), having gone through the scope of work, made an offer and the Corporation (ONGC) had accepted the offer. **Evidently, the purpose of leasing was to acquire and process the data for a geological survey for oil. Thus, both the acquisition of data on the vessel and its subsequent processing is part of the scope of work**.

34. The consideration to be paid for the work was a basic, all-inclusive price of US$ 7.5 million per month subject to some adjustments - towards fuel (if the prices of fuel exceed US$ 680 per metric ton), if additional source vessels were required, for any new software tool providing new breakthrough industry technology and PSDM allowances. It also provided for compensation to Western Geco for any downtime caused by fishing activities. **In a nutshell, there is a consolidated consideration in the form of basic price, all inclusive, with some adjustments based on contingencies.**

35. In particular, the contract specifies the following twelve (12) items as part of the all-inclusive basic price:

a) Q vessel with 6000 km x 6 streamer, 100-m separation, 8 sec record length and 4 ms processing.
b) Cost of providing boarding and lodging on-board the survey up to three of CORPORTAITONs/Government of India representative
c) Payment of Sales Tax, if any, on material bought in India.
d) Royalty payment of fees and utilization of patent rights, if any.
e) The cost connected with port calls, pilot age and harbour dues, etc.
f) The cost connected with reports etc.
g) Cost connected with the training of CORPORATIONS's personnel.
h) All costs on processing of DGPS Navigation Data.
i) All costs for DGPS as primary navigation system.

j) All costs related to submission of reports on processing of DGPS position data, preparation of post plot of survey lines.

k) All expenses towards cost of collection of Data and other technical information, packing, handling, transportation, completion of al customs/statutory formalities, freight, insurance, etc. for sending data along with processed outputs to CORPORTION, Mumbai or any other designated premises of CORPORATION after all formalities. THE insurance policy shall be arranged preferably from any one of the nationalized Indian Insurance Companies and shall be submitted to CORPORATION along with other documents.

l) Data Processing Charges of 4% of the basic price per month

36. The invoices were also issued for the entire amount indicating the 4% data processing charges as a separate line item and the rest 96% in another line item. A perusal of the entire contract shows that it is a single contract for the entire work and it is not contract for two different services. Data processing in the Mumbai office of Western Geco and the data acquisition in the ship are parts of the same contract. Data processing is one of the 12 activities included in the basic price for the service; merely because 4% of the basic price was indicated as towards this activity, it does not constitute a separate service.

37. We, therefore, agree with the finding in the impugned order that the contract was for a single service which was partly done in the sea beyond the territorial waters of India and partly done onshore in Mumbai. Services performed outside the territorial

waters of India are clearly not exigible to service tax because the Finance Act does not extend to places outside India. This leads us to the next question as to how the service should be treated when it was partly rendered on land in India and partly outside the territorial waters of India.

38. In the impugned order, the Commissioner, drawing analogy from the Service Tax (Determination of Value) Rules 2006, which at Rule 7(2) states that the value of taxable service specified in clause (ii) of Rule 3 of Taxation of Service (Provided from Outside India & Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient of such service including the value of service performed outside India, he confirmed the demand reckoning the total invoice value.

39. We agree with the Commissioner that if services are provided from outside India &received in India, the total value of the service must be reckoned to calculate service tax.

Person responsible to pay tax in this case

40. The next issue to be considered after the charge of service tax is who was responsible to pay service tax in these contracts. As per section 68, the person providing the taxable service has to pay the service tax. Section 68 as applicable during the relevant period reads as follows:

SECTION 68. Payment of service tax.

> (1) **Every person providing taxable service to any person shall pay service tax at the rate specified in section 66** in such manner and within such period as may be prescribed.
>
> (2) Notwithstanding anything contained in sub-section (1), in respect of any taxable services notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the personliable for paying the service tax in relation to such service.

41. In this case, it is undisputed that the service recipients (ONGC and RIL) were located in India and that service was provided. The question to be decided is who had to pay the service tax - the service provider or the service recipient. Usually as per section 68, the service provider has to pay the tax. **However, section 66A makes the service recipient responsible to pay service tax as if he was the service provider if the service provider has his usual place of residence outside India**. Usual place of business has been defined in the explanation to section 66A as the place where it is incorporated or otherwise legally constituted. Further, *where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of section 66A.*

42. Thus, if a multi-national company has a subsidiary incorporated in India, such subsidiary, being incorporated in India, has to pay tax. If the parent company incorporated outside

India provides the service, the service recipient has to pay tax. Sometimes, the MNCs do not have an Indian subsidiary but have project offices in India. As per section 66A, such project offices, being permanent establishments, will be treated as separate persons although they are not separate legal entities and are part of the MNC itself. In this case, Western Geco was incorporated in British Virgin Islands and not in India. It had project offices in Gurugram and in Mumbai which, although they were not separate legal entities, should be treated as separate persons for the purpose of section 66A. Therefore, they had obtained Service Tax registration. Instead of taking two different registrations, they obtained a Centralised Registration for their Gurugram office which was permissible. Thus, for the purpose of section 66A, there were two legal entities- Western Geco, BV Islands and Western Geco, Gurugram.

43. The contracts for the service were all entered into by Western Geco, BV Islands. It had the responsibility to carry out the work and produce deliverables as per the contracts and was entitled to receive consideration as per the contracts in US$ from ONGC. All remittances were to be made in US$ via telegraphic transfer to the account of Western Geco, BV Islands at the following address:

Bank’s Name: The Chase Manhattan Bank N.A.
Account No. 322-119565
Address: 1 Chase Manhattan Plaza
New York, NY 10081 USA

44. Nothing is brought on record or to our attention by either party that any contracts were entered into by the Gurugram or Mumbai project offices of Western Geco. However, the data analysis part of the work was done in the Mumbai project office of WesternGeco as a part of the work to be done by Western Geco, BV Islands. There was no *lis* between the ONGC and Western Geco Mumbai. No consideration was payable or paid by ONGC to Western Geco Mumbai.

45. Invoices under the contracts were raised by Western Geco Gurugram for the work done by Western Geco BV Islands. These invoices were in US$ as per the contracts and the payments were made in US$ by ONGC to the aforesaid bank account of Western Geco BV Islands in New York.

46. The irresistible conclusion is that data analysis by Western Geco Mumbai and the raising of invoices by Western Geco Gurugram were acts done on behalf of Western Geco BV Islands and were not based on some other contracts. There was no *lis* between ONGC and Western Geco Mumbai or Western Geco Gurugram. No contracts were entered into by ONGC with them and no payments were made to them.

47. The project offices of Western Geco in Mumbai and Gurugram and its headquarters in BV Islands were separate persons as per section 66A and the service provider was Western Geco BV Islands which was not located in India. Therefore, the charge of service tax was, as per section 66A, on the service

recipient ONGC. The demand of service tax could not have been issued to Western Geco Gurugram which neither provided any service nor received any consideration. The fact that it had issued invoices for the service provided by Western Geco BV Islands is immaterial because unless a service is provided and a consideration is received, no service tax can be charged.

48. We are conscious of clause 9.12 of the contract which reads as follows:

> 9.12 Service tax. The prices are exclusive of service tax which shall be charged at the applicable rates over and above the quoted prices and reimbursed by the CORPORATION against documentary evidence as per actuals.

49. The term CORPORATION above referred to the ONGC, the service recipient. The price indicated was to be received by Western Geco BV Islands which had no obligation to pay service tax at all under the Finance Act nor could it have claimed reimbursement of service tax from ONGC. On the other hand, ONGC was responsible to pay the service tax. **Any clause in the contract contrary to sections 66, 66A and 68 will not change the legal position because the charge of service tax flows from the Act and not from the contract. Conversely, if Service Tax was payable as per the Finance Act, and if there were any contrary clauses in any contracts, they cannot take away the charge of service tax.**

50. We also note the fact that service tax was actually paid by Western Geco Gurugram on 4% of the total value and the dispute

is only regarding the 96% of the total value. However, this also does not change the charge under section 66A (reverse charge on ONGC) to section 66 (forward charge on Western Geco, Gurugram). Western Geco Gurugram neither provided any service to ONGC nor received any consideration from it.

Rate of tax

51. The rate of tax is undisputedly, 12% of the twelve percent of the value of taxable services rendered as per section 66/66A.

Measure of tax or the value on which the tax should be collected

52. The next question is the measure of tax- on what value the tax should be charged. According to the appellant, service tax can be charged only 4% data processing charges and according to the Revenue, it must be charged on 100% of the value.

53. A perusal of the contract shows that it was a single contract for a basic price which included 12 activities. There were no separate contracts for data acquisition and data processing. The mere fact that a share of the total consideration was attributed to the activity of data processing does not make it a separate contract or contract for a separate service.

54. It is not uncommon to indicate values for some parts/costs of any contract as a part of the total consideration. A composite contract for construction of a building or structure, for instance, may have a Bill of Quantities (BOQ) indicating the materials to be used and their estimated prices. It does not mean that there is a separate sales contract for the goods indicated in the BOQ. A

lawyer providing legal services may bill his client for his services as well as for clerkage or for services of his juniors who assisted him in preparing the case. Such billing does not imply that the client has either an explicit or implicit contract with the clerks or the juniors of the advocate for their work. The essence of the contract is that of the advocate preparing and fighting the case of the client in courts. Similarly, a hospital may bill the patient for the surgeon, the anesthesiologist, the room, etc. but it does not mean that there are multiple contracts between the hospital and the patient- there is only a contract for treatment or surgery of the patient.

55. Indicating values of some parts of the total contract separately offers some practical advantages. It will help in financial adjustments if the contract gets frustrated by non-performance or by one of the parties reneging on the contract. It will also help in adjustments if additional costs have to be incurred due to changes such as, installation of double glazed windows instead of ordinary windows by the builder or an additional 1000 pages being copied and submitted as evidence by the advocate or additional procedures or tests being necessitated during the surgery. Merely because some costs are indicated separately, a single contract will not change it into multiple contracts.

56. **Thus, in this case, there were single contracts of Western Geco BV Islands with ONGC and RIL for**

geological surveys which were partly performed within India and partly outside the territorial waters of India.

57. The next question is whether tax has to be paid on the entire value when 96% of the work (by value) was performed outside India. When services are rendered by a person in one country to person in another, they may end up being rendered partly in India and partly outside India. During the relevant period (before 2012) two such situations were covered by the Rules- Export of services where a person in India provided service to a person outside India for consideration in freely convertible currency and Import of Services where a person outside India provided a service to a person in India for which he was paid in freely convertible currency. Rule 5 of the Export of Service Rules, 2005 reads as follows:

> **3. Export of taxable service. –** (1) Export of taxable services shall, in relation to taxable services,–
>
> (i) specified in sub-clauses(d),(m),(p),(q),(v),(zzq), (zzza),(zzzb),(zzzc),(zzzh),(zzzr),(zzzy),(zzz),(zzzza) & (zzzzm) of clause (105) of section 65 of the Act, be provision of such services as are provided in relation to an immovable property situated outside India;
>
> (ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), [* * *], (n), (o), [* * *], (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv),(zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), **(zzv),** (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk) and (zzzzl) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:
>
> **Provided that where such taxable service is partly performed outside India, it shall be treated as performed Outside India**

58. Conversely, Rule 3 of the Taxation of services (Provided from outside India and received in India) Rules, 2006 laid down that imported services partly rendered in India should be treated as having been rendered in India. This Rule reads as follows:

> **Rule 3 - Taxable services provided from outside India and received in India**
>
> Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services : (i) specified in sub-clauses (d), (m),] (p), (q), (v), (zzq), (zzza), (zzzb), (zzzc),(zzzh), (zzzr), (zzzy),(zzzz),(zzzza),(zzzzm), (zzzzu), (zzzzv) and (zzzzw) of clause (105) of section 65 of the Act, be such services as are provided or to be provided in relation to an immovable property situated in India;
> (ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (n), (o), (w), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zzc), (zzd), (zzf), (zzg), (zzi), (zzl), (zzm), (zzo), (zzt), **(zzv),** (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzzg), (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be such services as are performed in India:
>
> **Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder**

59. The Rule position was therefore, in short, that in case of import of services, if part of the service was rendered in India, it should be treated as having been rendered in India and conversely, in case of export of services, if part of the service was rendered outside India, it should be treated as having been rendered outside India. The Commissioner was correct in applying this Rule in deciding the case but he erred in ignoring Section 66A which states that if the service was rendered by a person outside India, the service recipient had to pay tax as if he had rendered the service. Rule 3 of the Taxation of services

(Provided from outside India and received in India) Rules, 2006 specifically stated that it is subject to section 66A. If Section 66A is also considered, the irresistible conclusion is that the charge of service tax was on the service recipients ONGC and RIL.

60. To sum up:

a) Tax is a compulsory exaction of money by the State and the taxpayer will not get anything in return. Unlike in fees, there is not even a broad relationship between the tax and any service.
b) Tax can be levied only if there is a charge under the law and can be recovered only as per the law.
c) Occurrence of the taxable event, the person responsible to pay tax, the rate of tax and the measure of tax are essential components of any charge of tax.
d) The contracts in these appeals were between Western Geco International Ltd., British Virgin Islands and the Oil and Natural Gas Company, India for providing service.
e) As per Section 68 of the Finance Act, Western Geco BV Islands which had entered into the contracts and its project offices Western Geco Gurugram which obtained a centralised service tax registration and paid service tax on 4% of the value and Western Geco Mumbai which carried out the data analysis should be treated as separate persons. ONGC and RIL had no contracts with Western Geco Gurugram or Western Geco Mumbai nor have any amounts been paid by ONGC or RIL to them. All contracts were with Western Geco BV Islands to whom the consideration was paid in US dollars.
f) Undisputedly, the service was covered by the definition of taxable service under section 65(105) (zzv) of the Finance Act, 1994.The contract was for a single service for a basic price which service included 12 different

activities including data analysis. Data analysis was not a separate service even though the cost of data analysis was indicated in the contract as 4% of the basic price.

g) Part of the service was rendered outside the taxable territory of India beyond 12 nautical miles from Indian land mass and part of it was rendered in India in Mumbai and as per Rule 3 of the Taxation of services (Provided from outside India and received in India) Rules, 2006, the service should be treated as having been rendered in India.

h) Western Geco BV Islands which provided the services was incorporated in BV Islands and therefore, as per section 66A, the charge of service tax was on ONGC and RIL, the service recipients.

i) The clauses in the contracts which stated that Western Geco BV Islands shall pay service tax and ONGC and RIL shall reimburse the service tax are irrelevant because the charge of service tax arises from the Finance Act and not from the contract.

j) The fact that Western Geco Gurugram had issued the invoices on behalf of Western Geco BV Islands or that it paid service tax on 4% of the contract amounts or the fact that Western Geco Mumbai had carried out the data analysis would make no difference to the fact that the service provider as per the contract was Western Geco BV Islands which alone received the consideration from the service under the contracts. Therefore, the charge of service tax was only on ONGC and RIL as per section 66A.

k) There was no charge of service tax on Western Geco Gurugram. Any demand of service tax for a taxable service made on a person who was not responsible to pay cannot be sustained.

l) The demand of service tax on Western Geco Gurugram, the appellant in these appeals therefore cannot be sustained and needs to be set aside.

m) Consequently, the interest on service tax and the penalties also need to be set aside.

61. The appeal is allowed and the order impugned is set aside. The appellant will be entitled to consequential relief, if any.

(Order pronounced in open court on 12/11/2025.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK