

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(27)76 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-114-16-17

दिनांक Date : 20.09.2016 जारी करने की तारीख Date of Issue

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Abhai Kumar Srivastav Commissioner(Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-MLM-018- 019-15-16 Date:
30.11.2015

Issued by: Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Hindustan Petroleum Corporation Limited

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the
one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त
धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त
मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी
चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में
या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे
वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

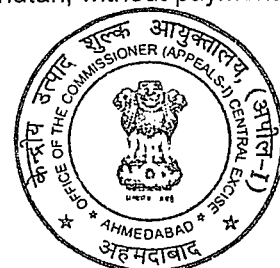
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India
of on excisable material used in the manufacture of the goods which are exported to any country or
territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल
हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

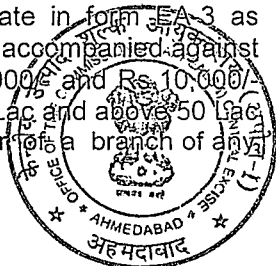
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Hindustan Petroleum Corporation Limited, Survey No. 124/1, N.H. 08, Near S.P.Ring Road, Nana Chiloda, District Gandhinagar, Gujarat,[for short '*appellant*'] has filed this appeal against OIO No. AHM-CEX-003-ADC-MLM-018-019-15-16 dated 30.11.2015, passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate[for short '*adjudicating authority*'].

2. Briefly stated, two show cause notices dated 27.8.2014 & 2.2.2016, were issued to the appellant based on Final Audit Report No. 137/2011-12 (EX) dated 27.2.2013, alleging that:

[a] they had availed CENVAT Credit of Rs. 12,18,990/- + Rs. 3,91,234/- on outward transportation of compressed natural gas [CNG] filled in mobile cascades from mother station to daughter stations; and
[b] they had wrongly availed CENVAT Credit of Rs. 7,63,533/- + Rs. 4,56,680/- in respect of service utilized for operation and maintenance of CNG Hydraulic Compressor sets, installed at various CNG stations/daughter stations at Ahmedabad.

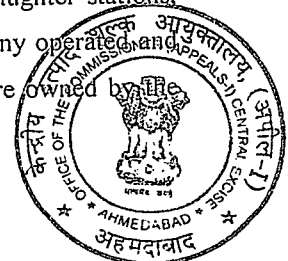
The notice therefore, *interalia*, demanded the wrongly availed CENVAT credit along with interest and also proposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944.

3. Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate, vide his impugned order dated 30.11.2015, confirmed the entire demand along with interest and further imposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944.

4. The appellant feeling aggrieved, has filed this appeal, raising the following grounds:

- definition of input service clearly states that any service used by a manufacturer would qualify as input service if the service is used for clearance of final products upto place of removal; that in the present case transportation service has been used for clearance of final product to the place of removal i.e. the daughter station;
- operation and maintenance services have been used for CNG hydraulic compressors installed at daughter stations;
- inclusive part of the definition of input service specifically includes the outward transportation service and operation and maintenance services upto the place of removal;
- that since CNG is sold from daughter station, the place of removal is daughter station;
- the Larger Bench of the Tribunal in the case of ABB Ltd [2009(15)STR-23], held that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as input service in terms of Rule 2(1)(ii) of CCR '04 thereby enabling the manufacturer to take credit of the service tax paid on the value of such services;
- the clarification issued by the Board vide circular no. 875/13/200/-CX dated 16.10.2008, is in respect of denying credit in respect of inputs/capital goods received at daughter station;
- as service tax credit has been utilized correctly there is no case for interest ; that since there was no *mens rea*, penalty is not imposable.

5. Personal hearing in the matter was held on 22.8.2016. Shri K. Balagurunathan, DGM(Finance), Ms. Roshni R Parmar, Accounts Officer and Shri Vaibhav Kumar Garg, officer of the appellant appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. Thereafter, vide their letter no. HPCNG/JC/CE/16-17/08 dated 29.8.2016, they submitted additional submissions wherein it was stated that of the *twenty one* daughter stations, *sixteen* were company owned dealer operated; *three* were company owned company operated and *two* were company leased dealer operated; that all the pumps and equipment were owned by the



appellant. They also submitted a sample copies of the agreement; that since compression is taking place at daughter stations, it cannot be treated simply as dispensing stations; that clarification of the Board vide its circular dated 16.10.2008 is not applicable in their case; that transportation charges from mother station to daughter station are also included in the value on which excise duty is discharged; that daughter station is to be treated as a place of removal; that they wish to rely on the case law of Cadbury India Ltd [2016(42) STR 055].

6. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing.

7. The issues to be decided are [a] whether the CENVAT Credit can be availed on *outward transportation* of CNG from mother station to daughter station; and [b] whether CENVAT credit can be availed in respect of *operation and maintenance* of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations at Ahmedabad which are not installed at their mother station.

8. As the issue revolves around CENVAT credit on input services, its definition, as per Rule 2(I) of the CENVAT Credit Rules, 2004, is reproduced for ease of reference :

[(I) "input service" means any service, -

- (i) used by a provider of [output service] for providing an output service; or*
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
- (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]*

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

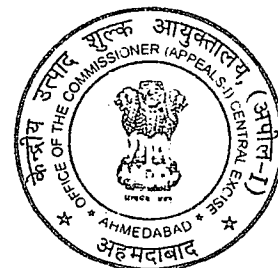
[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]*

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

8.1 Place of removal, as defined under Rule 2(qa) of the CENVAT Credit Rules, 2004 states as follows:

[(qa) "place of removal" means-



- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;]

CENVAT Credit on outward transportation

9. The dispute in respect of availment of CENVAT credit on *outward transportation* pertains to the period from **April 2011 to March 2014**. A conjunctive reading of the definitions of *input service* and *place of removal* clearly shows that CENVAT credit on outward transportation is available upto place of removal i.e. in this case upto *mother station* where compressors are installed which convert natural gas into compressed natural gas [CNG]. The appellant being manufacturer, CENVAT credit in respect of outward transportation would be available upto the place of removal. Thus, CENVAT credit availed in respect of outward transportation of CNG filled in high pressure gas cylinders, from mother station to daughter station would not be available in this case since it is outward transportation beyond the place of removal.

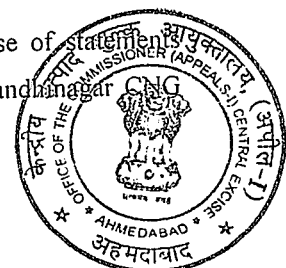
10. The appellant has relied upon the case of M/s. ABB [2009 (15) STR 23], wherein the Larger Bench of the Tribunal held that CENVAT Credit in respect of the outward transportation of goods to customer's premises is an *activity relating to business* and credit of service tax thereon would be admissible as per Rules 2(i) and 3 of CENVAT Credit Rules, 2004. However, department filed an appeal before the Hon'ble High Court of Karnataka, who vide its order dated 23.3.2011 [reported at 2011(23) STR 97], held that:

- the finding recorded by the CESTAT that the phrase and expression 'activities relating to business' admittedly covers transportation upto the customer's place was entirely unnecessary;
- vide notification No. 10/2008-C.E. (N.T.), dated 1-3-2008, the words 'clearance of final products upto the place of removal' were substituted in the place of the words 'clearance of final products from the place of removal'. The intention of the legislature is thus manifest. Till such amendment, the words 'clearance from the place of removal' included transportation charges from the place of removal till it reached the destination, namely the customer;
- the interpretation placed by the Tribunal on the words 'activities relating to business' as including clearance of final products 'from the place of removal' which occurred already in the first part of Rule 2(i)(ii) prior to 1-4-2008, runs counter to the language employed in the second part of the definition of 'input service' and is to that extent contrary to the legislative intention and therefore, the said finding is unsustainable in law;
- the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the said substitution and it cannot be included within the phrase 'activities relating to business'.
- we further make it clear that this interpretation is valid till 1-4-2008.

Hence, it is clear that post 1.4.2008, CENVAT credit in respect of outward transportation is admissible only upto the place of removal. Since in the case under consideration, the CENVAT credit was availed beyond the place of removal, the credit in this respect is inadmissible. Even otherwise, vide notification No. 3/2011-CE(NT) dated 1.3.2011, the definition of input services was amended and the words "*activities relating to business, such as*" were removed/omitted from the definition.

Availment of CENVAT credit in respect of operation and maintenance of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations

11. The appellant has in his appeal memorandum and during the course of ^{statement} explained his activity. Briefly, it is stated that the natural gas is received at Gandhinagar CNG

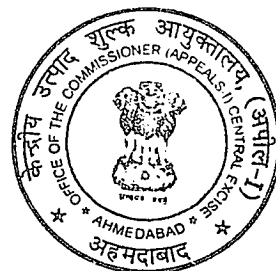


mother station through pipeline at pressure of 50 Kg/sq.cm. and is converted to a pressure of 220 kg/sq.cm. using compressors installed therein; that the finished product [CNG] is filled into high pressure gas cylinder which are mounted on light commercial vehicles and sent to daughter stations from where it is directly sold to customers. In a statement recorded by the department, it is further informed that booster compressors are installed at their daughter stations and hence all daughter stations are called daughter booster stations; that the stationery cascades are installed at their daughter stations through which they normally dispense CNG into vehicles by way of using dispensers directly from the mobile cascades installed at daughter booster stations; that as and when the quantity of CNG is reduced upon dispensing CNG into vehicles, the pressure of CNG in the cascades goes down and it affects the flow and quantity of CNG. The CNG in the cascades are required to be pressurized/compressed constantly to maintain the flow and quantity and it is for this that compressors are installed at daughter booster stations.

12. On going through literature available on the internet relating to hydraulic compressor- it is learnt that when a compressor is used as a booster, the system always supplies compressed gas at the right pressure, assuring the highest refuelling pressure throughout the vehicle fuelling cycle, maximising the use of storage volume and providing a vehicle fulfil. This type of compressor is also well suited for trailer unloading at daughter stations. The hydraulic booster intakes from each storage bank and can compress to medium or high storage bank, or directly into the vehicle. With this approach, gas is gradually displaced from low to medium bank, then from medium to high, and eventually from high bank directly into vehicles, increasing the amount of gas that is extracted from the storage, before the storage is considered empty since the vehicle tank pressure is higher than the storage pressure.

13. A manufacturer can avail CENVAT Credit in respect of input services when it is used directly or indirectly, in or in relation to the manufacture of final product and clearance of final products upto the place of removal. It has already been held supra, that the daughter stations are beyond the place of removal. The appellant, in his additional submissions dated 29.8.2016, has submitted that compression takes place even in daughter stations which means daughter stations cannot be treated simply as dispensing stations. Had this been the case, the appellant would surely have discharged duty at the daughter stations subsequent to taking registration of the daughter stations. Nothing has been provided by the appellant to prove that the daughter stations are registered under Section 6 of the Central Excise Act, 1944. Even otherwise, on going through the function of the hydraulic compressors – said to be installed at daughter stations, it is evident that the function is different from what happens at the mother stations, where actual manufacturing takes place. The appellant has also submitted that the daughter stations are either company owned or company leased. This would ideally make no difference since the input service is in respect of an equipment installed beyond the place of removal, which since no registration has been taken is not a part of manufacturing.

14. The appellant has stated that Circular No. 875/13/2008-CX, dated 16.10.2008 is not applicable since it talks about CENVAT credit on inputs and capital goods. Agreed, that the circular talks about availment of CENVAT Credit in respect of only those inputs/capital goods, which are used in the registered premises, where actual manufacturing takes place and not on



capital goods/inputs at daughter station. This spells out the spirit of the Government. The circular states that registration is to be given only in respect of those premises where CNG is actually manufactured i.e. where compressor is installed to convert natural gas into CNG. As stated by the appellant, and going by the function of hydraulic compressor, installed at the daughter station, it is evident that there is no conversion of natural gas into CNG at the said stations. Precisely, it is for this reason, no registration would have been taken. Hence, the argument that CENVAT credit in respect of operation and maintenance of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations is available, is not legally tenable.

15. In view of the foregoing, I uphold the original order dated 30.11.2015 and reject the appeal.

Date : 20.09.2016

Abhai
20.09.16
(Abhai Kumar Srivastav)
Commissioner (Appeal-I)
Central Excise, Ahmedabad

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise
Ahmedabad

BY R.P.A.D.

To,

M/s. Hindustan Petroleum Corporation Limited,
Survey No. 124/1,
N.H. 08,
Near S.P. Ring Road,
Nana Chiloda,
District Gandhinagar,
Gujarat

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Central Excise Gandhinagar division, Ahmedabad-III.
4. The Additional Commissioner, System, Central Excise, Ahmedabad-III.
5. Guard File.
6. P.A.

