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)84/Ahd-III/2016-17/Appeal-I** / 4260 + 4264

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-043-17-18**

दिनाँक Date :**10.07.2017** जारी करने की तारीख Date of Issue: 17-07-17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

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

Arising out of Order-in-Original: **AHM-CEX-003-ADC-032-33-16-17** Date: **05.10.2016**
Issued by: Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध 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 पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, स्ंसद 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 मामलें 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.

केन्द्रीय उत्पाद शुल्क आयुक्त (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर. अहमदाबाद–380016.

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 धार 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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 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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

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-DSN-032-033-16-17 dated 5.10.2016, passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate[for short - '*adjudicating authority*'].

2. Briefly stated, two show cause notices dated 2.2.2016 & 15.7.2016, were issued to the appellant, alleging inter-alia, that they had wrongly availed and utilized CENVAT Credit of Rs. 17,35,199/- [5,66,325/- + Rs. 11,68,874/-] on [i] outward transportation of compressed natural gas [CNG] filled in mobile cascades from mother station to daughter stations **and** [ii] for operation and maintenance of CNG Hydraulic Compressor sets, installed at various CNG stations/daughter stations. The notice therefore, demanded the wrongly availed CENVAT credit along with interest and further proposed penalty under Rule 15(1) of the CENVAT Credit Rules, 2004.

3. The adjudicating authority, vide his impugned order dated 05.10.2016, confirmed the entire demand along with interest and further imposed penalties on the appellant.

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;
- that there is no dispute that outward transportation service and operation and maintenance service have been used upto the place of removal and in place of removal, their treatment as an input service under Rule 2(l) of CENVAT Credit Rules, 2004, cannot be disputed;
- 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(l)(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. 875/13/2007-CX dated 16.10.2008, is in respect of denying credit in respect of inputs/capital goods received at daughter station;
- that both mother and daughter stations are compressing gas, their is a difference between compression activity at both the stations;
- 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 17.5.2017. Shri Viraj Chauhan, Accounts Officer, and Shri Vaibhav Garg, Sr. Operations Officer, of the appellant appeared before me and reiterated the arguments made in the grounds of appeal.

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 by me 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(l) of the CENVAT Credit Rules, 2004, is reproduced below for ease of reference:

[(l) "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 Further, 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;]

9. Now moving on to the first dispute i.e. CENVAT credit on outward transportation during the period from January 2015 to December 2015. On a joint reading of the definitions of *input service* and *place of removal*, it transpires 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 a manufacturer, CENVAT credit in respect of outward transportation would be available *upto the place of removal*. Thus, I find that the 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 to the appellant, in this case, as it is outward transportation beyond the place of removal.

10. The appellant's reliance on 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(l) and 3 of CENVAT Credit Rules, 2004, is not tenable owing to the fact that the 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 as follows:

- 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(l)(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, for the period consequent to 1.4.2008, CENVAT credit in respect of outward transportation is admissible only upto the place of removal. As in the case, the CENVAT credit was availed beyond the place of removal, the credit in this respect is not admissible to the appellant. Further, 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. Hence, in respect of the first question, I hold that the appellant is not eligible for CENVAT Credit on *outward transportation* of CNG from mother station to daughter station.

11. Now moving on to the second question, regarding availment of CENVAT credit in respect of *operation and maintenance* of CNG Hydraulic Compressor sets, installed at

various CNG stations/daughter stations, I find that the appellant has in his appeal memorandum and during the course of statements, explained his activity, which is that the natural gas is received at 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 earlier by the department, it was 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; that at the daughter stations they compress gas from 50-200 kg/sq. cm to 220 kg/sq. cm. depending on the pressure of LCV cascades/cylinders which comes continuously down from 220 kg/sq. Cm to 50 kg/sq. cm as the gas gets delivered to the customer.

12. The appellant, 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. I have already held supra, that the daughter stations are beyond the place of removal. The appellant, has further contended 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. 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. Since the input service is in respect of an equipment installed beyond the place of removal, for which no registration has been taken, it cannot be said to be 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. On going through the circular I find that the said 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. The intention of the Government is therefore, clear since 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. Further, 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.

14.1. I further find that the Hon'ble Tribunal in the case of Mahanagar Gas Limited [2016(343) ELT 332 (Tri-Mumbai)], has already decided a similar matter. The head notes are reproduced below, for ease of reference:

Cenvat - Capital goods - Cascades and compressors installed at Daughter Booster Stations (DBS) for dispensing CNG into vehicles - Cascades used to transport CNG from mother station to DBS - Cenvat credit availed on capital goods at mother station, and credit availed thereon - Cascades are only transporting CNG which has already came into existence as a manufactured product and is a marketable commodity, hence, activity of recompression neither incidental nor ancilliary for manufacture of CNG at DBS - At DBS recompression of CNG does not bring into existence any new distinct product - Denial of credit upheld - Rule 3 of Cenvat Credit Rules, 2004. [para 5.2]

Demand - Limitation - Suppression of fact - Availment of Cenvat credit on capital goods at mother station is only declared to department but credit of duty paid on cascades and compressor used at Daughter Booster Station (DBS) not indicated as being installed and commissioned at DBS - Demand not time-barred - Section 11A of Central Excise Act, 1944. [para 5.3]

15. In view of the foregoing, I uphold the original order dated 5.10.2016 and reject the appeal filed by the appellant.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)

Date :10.08.2017

Attested

(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

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS-I) AHMEDABAD अहमदाबाद

Copy to:-

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