आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

सत्यमेव जयते

07926305065- टेलेफैक्स07926305136

NATION TAX MARKET

रजिस्टर्ड डाक ए.डी. द्वारा

DIN- 20210864SW000062140G1

क फाइल संख्या : File No : GAPPL/COM/CEXP/14/2021 / 2734 TO 2738

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP- 018/2021-22**

दिनाँक Date : **29-06-2021** जारी करने की तारीख Date of Issue 18/08/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **09/D/GNR/DK/2020-21** issued by Deputy Commissioner, preventive, Central Tax, Gandhinagar commissionerate.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat Gas Limited,GSFC House,4th Floor,opp. Drive-in Cinema,B/h. Reliance Mart,Bodakdev,Ahmedabad-380054.

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 issued under the Central Excise Act 1944,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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप--धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(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।

(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.

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) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गतः–

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण **(सिस्टेट)**, के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

(7)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Gujarat Gas Limited, GSFC House, 4th Floor, Opposite Drive-in Cinema, B/h. Reliance Mart, Bodakdev, Ahmedabad-380054 [earlier known as M/s. GSPC Distribution Networks Limited, GH-Road, Sector-5, Gandhinagar/M/s. GSPC Gas Co. Ltd, 101-106, 1st Floor, IT Tower, Infocity, Gandhinagar](hereinafter referred to as '*appellant*') against Order in Original No. 09/D/GNR/DK/2020-21 dated 05.05.2020(hereinafter referred to as '*the impugned order*') passed by the Deputy Commissioner (Preventive), Central GST& Central Excise, Commissionerate-Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant were registered as manufacturer of "CNG Gas" (Compressed Natural Gas) falling under Chapter 27112100 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AAECG8093QEM001. They were transporting their clearances of CNG from their mother station to daughter station through mobile cascades and availed Cenvat Credit of GTA Service in respect such clearances.

2.1 Show Cause Notices, as per details below, were issued to the appellant, alleging that they had wrongly availed CENVAT Credit amount of Rs.47,94,118/- & Rs.18,56,223/- respectively on 'Outward Transportation' of Compressed Natural Gas [CNG] filled in mobile cascades from mother station to daughter stations. These show cause notices were issued for recovery of wrongly availed CENVAT credit along with interest and also proposed imposition of penalty under Rule 15(1) of the CENVAT Credit Rules, 2004 (CCR).

Sr. No	Show Cause Notice issued vide F. No.& Date	Amount	Period involved
1	V.27/15-11/DEM/OA/16-17 dated 26.05.2016	Rs.47,94,118/-	15.05.2015 to 30.11.2015
2	V.27/15-105/DEM/OA/15-16 dated 03.05.2016	Rs.18,56,223/-	01.04.2015 to 14.05.2015

2.2 The abovementioned show cause notices were adjudicated by the Assistant Commissioner, Central Excise, Gandhinagar Division, erstwhile

Ahmedabad-III Commissionerate, vide the Order-in-Original dated 23.05.2017 & 25.05.2017 respectively, as detailed below:

Sr. No	Order-in-Original No.& Date	Cenvat Credit disallowed/Penalty imposed	Period involved
1	03/D/GNR/VHB/2017-18 dated 23.05.2017	Rs.47,94,118/- (Cenvat Credit disallowed) Rs.4,79,412/- (Penalty imposed)	15.05.2015 to 30.11.2015
2	04/D/GNR/VHB/2017-18 dated 25.05.2017	Rs.18,56,223/-(Cenvat Credit disallowed) Rs.1,85,622/- (Penalty imposed)	01.04.2015 to 14.05.2015

2.3 Subsequently, the appeals filed by the appellant against the abovementioned Order-in-Originals passed by the Assistant Commissioner, Central Excise, Gandhinagar Division, erstwhile Ahmedabad-III Commissioneratehave also been rejected bythe Commissioner (Appeals), Central Tax, Ahmedabad vide Order-in-Appeal No. AHM-EXCUS-003-APP-0232-235-17-18 dated 28.03.2018.

2.4 Thereafter, the appellant had filed an appeal before the Hon'ble CESTAT, Ahmedabad against the Order-in-Appeal No. AHM-EXCUS-003-APP-0232-235-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad.Hon'ble CESTAT vide Final Order No. A/10254-10256/2019 dated 08.02.2019 held that:

> *" I find that the identical issue has been remanded by the Tribunal vide Order No. A/12028-12029/2018 dated 25.09.2018. In the instant case, the appellants are claiming that the goods are supplied on FOR destination basis. Thus for verification of facts and redetermination of dispute in terms of aforesaid Circular dated 08.06.2018, the impugned order is set-aside and the matter is remanded to the Adjudicating Authority for fresh decision. Revenue appeal is also allowed by way of remand. Cross objections disposed off. "*

2.5 In the de-novo adjudication proceedings in terms of the directions of Hon'ble CESTAT vide Final Order dated 08.02.2019, the adjudicating authority vide the impugned order disallowed cenvat credit of Rs. 47,94,118/- as well as of Rs. 18,56,223/-, as proposed in both the abovementioned show cause notices and ordered recovery thereof alongwith

interest in terms of the provisions of Rule 14 of the Cenvat Credit Rules, 2004 readwith Section 11AA of the Central Excise Act, 1944. In addition, penalty of Rs. 4,79,412/- and Rs. 1,85,622/- were also imposed on the appellant in terms of the provisions of Rule 15(1) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant preferred this appeal making contentions, as narrated in following paragraphs.

3.1 The adjudicating authority has nowhere in his order discussed Board Circular No. 1065/4/2018-CX., dated 08.06.2018 or the judgments of Hon'ble Supreme Court referred to in the Circular. Accordingly, the adjudicating authority has passed the order arbitrarily, ignoring the directions of Hon'ble Tribunal and hence, the same may be set aside.

3.2 As per the clause 5.3 of CNG standard agreement, ownership of CNG remains with the appellant till it reaches the inlet of the CNG dispensing unit. Since CNG dispensing unit lies at daughter station, the ownership of CNG remains with the appellant upto daughter station and sales takes place at daughter station only.

3.3 The CNG cannot be sold without dispensing and CNG is dispensed at CNG station only. As per the judgment of Honourable Supreme Court in the case of Ispat Industries Ltd, "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". The CNG dispensing units installed at daughter station are owned by appellants, from where CNG is dispensed. Hon'ble Supreme Court in case of Emco Ltd. after taking into consideration the conditions of the contract has held that place of removal is the place of buyer as the sales takes place at the premise of the buyer. In the case of Roofit Industries Ltd., Hon'ble Supreme Court has held that place of removal is to be decided on the basis of transfer of ownership of the goods and in the present case, transfer of ownership takes place at inlet of dispenser. The judgment of Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd. deals with the issue of cenvat credit 'from the place of removal'. The appellants have furnished copies of stock transfer invoices and sample copies of VAT invoices issued at daughter station to establish that the goods were first transferred from mother station to daughter station and thereafter sales invoices are raised from daughter station. As sale does not take place at mother station and sale takes place when CNG is dispensed from

dispenser at daughter station, it clearly establishes that place of removal is daughter station. Consequently, cenvat credit availed on transportation from mother station to daughter station cannot be disallowed.

3.4 As per clarification of Board Circular dated 08.06.2018, referred to by the Hon'ble Tribunal, determination of 'place of removal' should be made as per the principle laid down by Hon'ble Supreme Court in the case of CC&CE, Nagpur Vs. Ispat Industries Ltd. cited at [2015(324) ELT 670 (SC)]. Further, it has been clarified by Board that in the case of CCE, Mumbai-III Vs. Emco Ltd. [2015 (322) ELT 394 (SC)] and CCE Vs. Roofit Industries Ltd. [2015 (319) ELT 221 (SC)] the Apex Court has extended benefit on the ground that ownership and risk in transit remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal. Accordingly, the appellants have furnished evidences to prove that the ownership of CNG remains with appellant till the CNG is not dispensed from inlet and as such place of removal is daughter station. The appellants produced following evidences to prove that place of removal is daughter station:

(i). Clause 5.3 of CNG Standard Agreement
(ii). Schematic diagram of CNG Dispenser depicting inlet, outlet and nozzle.
(iii). Para-3.1 of Standard Agreement
(iv). Para-3.6 of Standard Agreement
(v). Copies of VAT invoices issued from daughter station and copy of application for single Central Excise Registration
(vi). Sample copies of daughter station sales invoices and stock transfer invoices

The Deputy Commissioner while ignoring the clauses of agreement has held as under:

"Thus, I find that the agreement in the instant case cannot be relied upon to arrive at the place of removal since the same is only an arrangement arrived at in view of the special nature of the commodity namely CNG. (Para 8.6 of order)"

With respect to above finding on the agreement, it is submitted that the adjudicating authority ought to have given his findings on the basis of the evidences viz. terms of agreement. However, the adjudicating authority has made efforts to find fault with the agreement, albeit irrelevantly. Hon'ble

Supreme Court in the case of CCE, Mumbai-III Vs. Emco Ltd. [2015 (322) ELT 394 (SC)] and CCE Vs. Roofit Industries Ltd. [2015 (319) ELT 221 (SC)] pronounced the judgment taking into consideration the agreements/contract entered into between the parties. As such agreement being vital evidence cannot be discarded whereas the adjudicating authority has passed the order discarding the agreement.

3.5 The appellant has also furnished copies of VAT invoices issued from daughter station to prove that sales takes place at daughter station. The adjudicating authority has discarded VAT invoices on the ground, which reads as under:

> *"However, in light of the above discussion, I find that the tax invoices do not bear in detail about place and time or removal and thus they are of no avail are not evidencing with regard to place of supply and are of no help to determine as to where the sale has taken place since the invoices are raised after the sale of the goods by the company/dealer to the retails buyers in terms of clause 8.2 of the agreements entered into by the noticee with the company. (Para 8.7 of OIO)"*

With respect to above findings, it is submitted that details of place and time of removal are required to be shown in central excise invoices and not in VAT invoices. As such the adjudicating authority has discarded all the evidences arbitrarily, unreasonably and in cryptic manner.

3.6 As per the relevant clauses of standard agreement (5.3, 3.1 & 3.6), the copies of VAT invoices issued from daughter station and STO invoices issued from mother station, it clearly establishes that CNG dispensing unit lies as daughter station; that ownership of CNG remains with appellant upto the daughter station; that sales takes at daughter station and that sales actually takes place at inlet of the dispenser. Therefore, cenvat credit cannot be disallowed.

3.7 The appellant has also furnished copy of Cargo Insurance Policy No. 22560846 and as per the said transit insurance policy for mother station to daughter station, it clearly establishes that ownership of CNG remains with appellants till the CNG is transferred at daughter station.

3.8 In respect of the penalty imposed, the appellant relying on the following judgment contended that the penalty is not imposable when issue involved is interpretation of law.

(i). Market Systems Vs. CCE&ST, Vadodara-II cited at 2015 (38) STR 970 (Tri. Ahmd.)

(ii). Kapilansh Dhantu Udyog Pvt. Ltd. Vs. CCE, Nagpur cited at 2013 (31) STR 50 (Tri. Mumbai)

(iii). Soil & Enviro Industries (P) Ltd. Vs. CCE, Kolkatta-VII cited at 2014 (314) ELT 586 (Tri. Kolkatta)

3.9 As per Circular No. 1065/4/2018-CX dated 08.06.2018, referred by the Hon'ble Tribunal while remanding the matter, in para 7 clarified as under:

> *"7. No extended period: Any new show cause notice issued on the basis of this circular should not invoke extended period of limitation in cases where an alternate interpretation was taken by the assessee before the date of the Supreme Court judgment as the issue is in the nature of interpretation of law."*

On perusal of above clarification, it is evident that issue of 'place of removal' with respect to cenvat credit on GTA service is in the nature of interpretation of law. As such allegation of suppression of facts cannot be held against the appellants and consequently penalty cannot be imposed in the case where issue of 'place of removal' is involved.

4. The appellant was granted opportunity for personal hearing on 29.04.2021 through video conferencing. Shri. P. G. Mehta, Advocate,appeared for personal hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. I find that the issues to be decided in the case are as under:

(a) *Whether the Cenvat Credit can be availed on 'Outward Transportation' of CNG from mother station to daughter station;*

(b) *Whether the penalty imposed by the adjudicating authority under Rule 15(1) of Cenvat Credit Rules,*2004 *read with Section 11AC of the Central Excise Act, 1944is correct or otherwise?*

6. I find that the services used in relation to outward transportation 'upto the place of removal' are covered under the definition of "Input Service" as defined as per Rule 2(l) of the Cenvat Credit Rules, 2004 and that the credit of outward transportation would be admissible if such transportation is upto the place of removal. Thus, in the present case, the place of removal is the key point to be decided, for the purpose of determining the admissibility of the Cenvat Credit under dispute.

7. Further, the matter is in remand proceedings in pursuance of the directions of the Hon'ble CESTAT, Ahmedabad vide Final Order No. A/10254-10256/2019 dated 08.02.2019 for denovo consideration. The directions of the Hon'ble CESTAT Order dated 08.02.2019 are re-produced below:

> *"2. Ld. Counsel for M/s. Gujarat Gas Limited pointed out that the sale of gas takes place at the daughter station when the mother station has actually supplied to the buyers and till then they were the owner of the gas. He claims that the gas is supplied on FOR destination basis and in these circumstances they are entitled to Cenvat credit, in terms of* ***Circular No. F/116/23/2018-CX-3 dated 08.06.2018****. He pointed out that in identical circumstances the matters have been remanded to the original adjudicating authority to decide the matter in terms of aforesaid Circular.*
>
> *3. Ld. AR relied on the impugned order.*
>
> *4. I find that identical issue has been remanded by the Tribunal vide Order No. A/12028-12029/2018 dated 25.09.2018. In the instant case, the appellants are claiming that the goods are supplied on FOR destination basis.* ***Thus, for verification of facts and redetermination of dispute in terms of aforesaid Circular dated 08.06.2018, the impugned order is set-aside and the matter is remanded to the Adjudicating Authority for fresh decision.*** *Revenue's appeal is also allowed by way of remand. Cross objection also disposed of."*

7.1 Accordingly, I find that the matter was remanded by the Hon'ble CESTAT to the adjudicating authority for fresh decision after verification of facts and redetermination of dispute in terms of Circular No. F/116/23/2018-CX-3 dated 08.06.2018.Further, the directions/clarification issued by CBIC vide said Circular dated 08.06.2018 are reproduced below:

"2. In order to bring clarity on the issue it has been decided that Circular no. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of this circular.

3. ***General Principle****: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Honb'le Court in para 16 in this regard is significant as reproduced below*

> *"16. It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof. Sub-clause (b) (iii) is very important and makes it clear that a depot, the 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 are all places of removal. What is important to note is that each of the premises is referable only the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises. "*

4. Exceptions: (i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC). To summarise, in the case of FOR destination sale such as M/s Emco Ltd and M/s Roofit Industries where the ownership, risk in

transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases."

8. It is observed that CBIC Circular No. F/116/23/2018-CX-3 dated 08.06.2018, clearly mentionsat para-2 that Circular No. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. However, on going through the impugned order, it is observed that the adjudicating authority has in Para 8.2 of impugned order has referred and discussed Circular No. 988/12/2014-CX dated 20.10.2014 while examining the issue of 'place of removal' in the present case and relying thereon delivered his findings vide the impugned order. In view of the clarification given by the CBI vide aforesaid Circular dated 08.06.2018, I find that the findings of the adjudicating authority, referring to a rescinded Circular for arriving at conclusion are legally not sustainable.

9. Further, I find that Hon'ble CESTAT has remanded the matter to the adjudicating authority referring the contention of the appellant that "*the gas is supplied on FOR destination basis and in these circumstances they are entitled to Cenvat credit, in terms of Circular No. F/116/23/2018-CX-3 dated 08.06.2018.*", for fresh decision after verification of facts and redetermination of dispute in terms of aforesaid Circular dated 08.06.2018. As per para 4 of the said Circular, it is clarified by board that "in the case of FOR destination sale such as M/s Emco Ltd[2015(322) ELT 394(SC)] and M/s Roofit Industries [2015(319) ELT 221(SC)]....., benefit has been extended by the Apex Court on the basis of facts of the cases." Whereas, on going through the impugned order, I find that the adjudicating authority has neither examined the facts of the present case nor given any findings thereon in the impugned order whether the circumstances are identical to the both the above mentioned cases wherein Hon'ble Apex Court has already settled the issue regarding place of removal.

10. In view of the discussion at para-8 and para-9 above, it is observed that the adjudicating authority has overlooked the directions given by Hon'ble CESTAT vide Final Order No. A/10254-10256/2019 dated 08.02.2019 for fresh decision after verification of facts and redetermination of dispute in terms of aforesaid Circular dated 08.06.2018 and given findings which are also contrary to the clarification given by Board vide said circular. Accordingly, the impugned order passed by the adjudicating authority is not

legally correct and hence, I find it appropriate to remand the present case to the adjudicating authority to decide it afresh following the principle of natural justiceand reconsider the issue in terms of the clarifications issued by the Board vide Circular dated 08.06.2018, and pass a speaking order after examining the facts and relevant documentary evidences of the present case.

11. In view of the above, the impugned order passed by the adjudicating authority is set aside and is remanded to the adjudicating authority for de-novo consideration, for verification of facts and redetermination of dispute in terms of aforesaid Circular dated 08.06.2018 and to issue a fresh order.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निप़टारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

29th June, 2021

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D

M/s. Gujarat Gas Limited,
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4th Floor, Opp. Drive-in Cinema,
B/h. Reliance Mart,
Bodakdev, Ahmedabad-380054

Copy to:

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Commissionerate-Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Gandhinagar, Commissionerate-Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), Central GST, Commissionerate-Gandhinagar.
5. Guard file
6. PA File