आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

DIN : **20211164SW0000015534**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/34/2021/ AHGM T04639

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-55/2021-22**
दिनॉक Date : **12-11-2021** जारी करने की तारीख Date of Issue 30.11.2021

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-PMR-007-20-21** दिनाँक: **16.12.2020** issued by Additional Commissioner, CGST& Central Excise, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address:

Appellant:
The Assistant Commissioner,
CGST Division Gandhinagar,
1st Floor, CGST Bhavan, Sector-10A,
Gandhinagar-382010

Respondent:
M/s Sabarmati Gas Ltd.
Plot No. 907, Sector-21, Gandhiagar-382021/
CNG Station, Bharat Petroleum Corporation Ltd,
GSRTC Bus Depot, Pathikashram, Gandhinagar-382007

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 हानिकार खाने 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 मे 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.

(क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

(B) 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।

(c) 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

Under Section 35B/ 35E of CEA, 1944 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,BahumaliBhawan,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 होत`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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

(33) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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)

केन्द्रीय उत्पाद शुल्क और सेवाकर 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:
(lxxxii) amount determined under Section 11 D;
(lxxxiii) amount of erroneous Cenvat Credit taken;
(lxxxiv) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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

The present appeal has been filed by the Assistant Commissioner, Central GST, Gandhinagar Division, Commissionerate- Gandhinagar (hereinafter referred to as the appellant), on the basis of Review Order No. 14/2020-21 dated 09.02.2021 passed by the Commissioner, Central GST & C.Ex., Gandhinagar Commissionerate in terms of Section 84 of the Finance Act, 1994 against Order in Original No. AHM-CEX-003-ADC-PMR-007-20-21 dated 16.12.2020 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST &, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Sabarmati Gas Ltd, Plot No. 907, Sector-21, Gandhinagar-382 021/ CNG Station, Bharat Petroleum Corporation Limited, GSRTC Bus Depot, Pathik Ashram, Gandhinagar – 382 007 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent is engaged in providing (i) GTA Services, (ii) Legal Consultancy Services, (iii) Rent-a-Cab Service & Other services for which they were holding Service Tax Registration No. AAKCS0110NXM003. During the course of audit of records of the respondent, for the period from January, 2016 to March, 2017, by the departmental officers, it was observed by audit officers that the respondent had shown an amount of Rs.77,23,407/- (for F.Y. 2015-16) and Rs.11,80,949/- (for F.Y.2016-17) totaling Rs.89,04,356/- under the head of Miscellaneous Income in their Books of Accounts. The respondent informed that the same was towards interest on delayed payment and reduction in expenses due to wrong billing. They, however, failed to submit documents in support of their claim. It was also noticed that the respondent had shown income under the head of Interest Income with a separate entry. Therefore, the claim of the respondent appeared to be incorrect and they had not paid service tax amounting to Rs.13,35,653/-.

2.1 It was also observed by the audit officers that the respondent had received deposits from their customers amounting to Rs.5,71,49,445/- (in F.Y.2008-09) and Rs.5,72,995/- (for F.Y.2009-10), which was converted into income by passing a resolution, and was accounted for in F.Y.2015-16 and F.Y. 2016-17 respectively. The respondent informed that the above income was towards deposits received from customers during F.Y. 2008-09 and 2009-10. It appeared that the respondent had shown the deposits collected during F.Y. 2008-09 and 2009-10 as income in their books of accounts for F.Y.2015-16 and F.Y. 2016-17. It also appeared that there was an element of consideration and a service has been made by the respondent which appeared to fall within the ambit of Section 66(E) (e) of the Finance Act, 1994. They appeared to have not paid an amount of Rs.86,58,366/- on this income.

2.2 Therefore, the respondent was issued a Show Cause Notice No. VI/1(b)/CTA/Tech-14/SCN/Sabarmati Gas/2019-20 dated 10.06.2019 seeking to :

i. recover the service tax amounting to Rs.13,35,653/- on the total income of Rs.89,04,365/- under the proviso to Section 73 (1) of the Finance Act, 1994;
ii. recover the service tax amounting to Rs.86,58,366/- on the total income of Rs.5,77,22,440/- under the proviso to Section 73 (1) of the Finance Act, 1994;
iii. charge and recover interest under Section 75 of the Finance Act, 1994
iv. impose penalty under Section 78 (1) of the Finance Act, 1994.

3. The said SCN was adjudicated vide the impugned order and the SCN was vacated by the adjudicating authority.

4 Being aggrieved with the impugned order, the appellant department has filed the instant appeal on the following grounds:

i) The adjudicating authority while adjudicating the case relating to the security deposit collected from their customers as non refundable security deposit appears not to have examined the factual position involved. The respondent has received income for laying PNG line for supply of gas. The same appears to fall under the category of supply of tangible goods service and is liable for payment of service tax.

ii) The definition of the terms consideration is quite wide which includes any amount which is payable or paid in the context of taxable service. There is no restriction that the consideration should flow from service recipient to service provider. The facts and circumstances reveal that the respondent received income for laying PNG line for supply of gas. Such income is the consideration for providing taxable service with a clear nexus. Therefore, the respondent is liable to pay service tax.

iii) Along with laying of pipe line for supply of gas at the customer's place, the PNG supplier also provides one measurement equipment also called as SKID equipment, which ensures accuracy of billing and regulation of supply of gas. The PNG supplier enters into a Gas Sales Agreement (GSA) with customers to whom gas is supplied.

iv) The laying of PNG line for supply of gas alongwith SKID equipment can be considered as providing service along with tangible goods. The respondent is providing the service which includes supply of gas and service to facilitate measurement and regulation of supply of gas to the customer.

v) The CBIC vide Circular No. 334/1/2008-TRU dated 29.2.2008 has clarified that transaction allowing other persons to use the goods without legal right of possession and effective control, not being treated as sale, is treated as service. In the instant case, the ownership of the pipeline and measurement equipment always lie with the respondent. Hence, it can be safely concluded that the respondent is providing taxable service.

vi) The impugned order is a non-speaking, cryptic and obscure one and therefore, suffers from severe legal infirmities. The adjudicating authority has simply dropped the demand by placing reliance on the judgement of a Consumer Forum in Mehsana wherein the case of the respondent was accepted by the Forum that an amount of Rs.5,000/- was in relation to supply of gas only and the same was non-refundable and the remaining amount of Rs.5,000/- was non-refundable security deposit which had suffered VAT during 2007 and 2008.

vii) Reliance is placed upon the decision of the Hon'ble Supreme Court in the case of Adani Gas Ltd reported in 2020 (40) GSTL 145 (SC) wherein it was held that the supply of pipelines and the measurement equipment (SKID equipment) was of use to the customer and is taxable under Section 65 (105)(zzzz) of the Finance Act, 1994.

viii) Reliance is also placed upon the decision in the following cases 1) Idea Mobile Communication Ltd. Vs. Commissioner of C.Ex., & Customs, Cochin reported in 2011 (23) STR 433 (SC); 2) Imagic Creative Pvt Ltd Vs. Commissioner of Commercial Taxes – 2008 (9) STR 337 (SC);, 3) Indian Coffee Workers Co-op Society Ltd Vs. CCE & ST, Allahabad – 2014 (34) STR 546 (All.); 4) Premier Car Sales Ltd Vs. CCE & ST, LKO – 2019-TIOL-1989-HC-ALL-ST and 5) Poonam Roofing Products Pvt Ltd Vs. Commissioner of C.Ex., Pune-III reported in 2018 (19) GSTL J65.

ix) The decision of the Hon'ble Supreme Court in the case of Adani Gas is squarely applicable to the present case as per the facts and circumstances of the present case. The respondent have themselves admitted that they had received Rs.10,000/- from customers for gas connection charges which was non-refundable security deposit and the same was for laying PNG line for supplying gas. The amount received as non-refundable deposit was nothing but charges collected from customers.

x) There is a provision of service by one person to another and the service is provided in relation to the supply of PNG which is possible only by way of supply of certain tangible goods like pipe line for movement of gas right upto the place of customer and other necessary equipment to regulate and measure the gas supplied to the customer. Such tangible goods are the property of the PNG supplier and right of ownership is not transferred. It is only for use by the customer. As such there is an element of service and accordingly levy becomes imminent and the consideration is received by way of collecting non-refundable deposits from customers.

xi) From the decisions of the higher appellate authorities cited it is established that the charge of service tax is not on sale of goods but on a taxable service provided. Hence, payment of VAT would not exclude the liability of service tax.

5. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri Sandip Gupta, CA, appeared on behalf of the respondent for the hearing. He stated that the demand is time-barred. He further stated that he would make a written submission.

6. In the written submission dated 30/10/2021 filed on behalf of the respondent it was urged that :

- The receipts under consideration were for the period April, 2007 to September, 2009 for which service tax has been raised during the period 2019. There is nothing in the case to sustain as the very basis is even beyond the extended period of limitation.
- All the transactions were admittedly recorded fully in their records and, therefore, a case of suppression of facts could not be made out. The transactions are formalized by way of agreements, contracts, work orders etc. and all receipts have been received in

accounted manner and such receipts are reflected in the books of accounts.

- The demand raised in SCN dated 10.06.2019 for the receipts of the period April, 2007 to September, 2009 was barred by limitation.
- Even the CERA auditors have audited their books of accounts and the matters which are in dispute are very much apparent from the books of accounts itself. The CERA audit report was also shared during the course of the departmental audit.
- The receipts were already recorded in their books of accounts in April, 2007 to September, 2009 and during the year 2015-16 they had just transferred the balance from Balance Sheet to Profit and Loss Account as per the accounting principles.
- The grounds raised in the appeal considering the facts as income for laying PNG line for supply of gas should fall under 'supply of tangible goods services' and liable to payment of service tax and interest is void.
- The CBIC vide Letter F.No. 334/1/2008-TRU dated 29.2.2008 clarified with regard to classification of service of composite service.
- Supplying pipeline, measurement equipment etc. was just ancillary to its main supply i.e. natural gas. For supply of gas they have to procure many goods and services and deploy huge manpower. However, it can never be said that they are supplying these goods or services or manpower.
- The concept of composite supply/bundle supply was not discussed in the case of Adani Gas Ltd and, therefore, the same is not applicable to the facts of their case.
- Supply of tangible goods is brought into tax on 16.05.2008. Hence, there cannot be any question of service tax before that. Their receipts are from April, 2007 to September, 2009. Therefore, the liability should be reduced to Rs.1.60 crores from Rs.5.71 crores considering the receipts of Rs.4.11 crores received before 16.05.2008.

- Since service tax was not applicable the related credits were also not availed by them. If at all service tax is charges, credit relating to it should also be allowed and liability reduced accordingly.
- The service tax auditors were convinced that service tax is not applicable on these receipts. In FAR No. ST-600/2018-19, it was stated that the said income was chargeable to Service Tax under Section 66E of the Finance Act, 1994. Till this stage, the department was of the view that the receipts can at the most be treated under declared services. Surprisingly, in the appeal filed by the department such receipts are covered under 'supply of tangible goods', which is not at all applicable in their case.
- Considering the facts of the case, as department also differs its contentions of taxability at different levels of scrutiny, it is not the case of suppression but matter of interpretation.
- They, being a government company, do not have any malafide intention for evading duty. In this case there is only a difference of opinion regarding taxability of services. Hence, contention regarding imposition of penalty is not appropriate.
- They rely upon the decisions of various courts and appellate authorities in this regard.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. The issue involved in the present appeal that is required to be decided is whether the deposits received by the respondent from their customer is a consideration and taxable to service tax. It is the contention of the appellant department that the deposits are consideration for laying of pipeline for supply of gas and other equipment to regulate and measure the supply of gas to the customer and is therefore, taxable as 'supply of tangible goods'.

7.1 I find that there has been no consistency in the stand of the appellant department. In the audit report and the SCN issued to the

respondent, it was the view of the appellant department that the deposits received by the respondent was chargeable to Service Tax under the category of Declared Services in terms of Section 66E (e) of the Finance Act, 1994. I find that the service covered by the said section are "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*". However, in the appeal filed, the appellant department have taken an entirely new stand that the deposits received by the respondent was consideration for 'Supply of Tangible Goods Service' in terms of Section 65 (105) (zzzzj) of the Finance Act, 1994. Therefore, on this ground alone the appeal is liable to be dismissed.

7.2 I also find merit in the contention of the respondent that 'supply of tangible goods service' was brought into the service tax net only from 16.05.2008. I find that clause (zzzzj) of sub-section 105 of Section 65 of the Finance Act, 1994 was introduced w.e.f by virtue of Finance Act, 2008. Therefore, the demand of service tax, if any, can only be for the period from 16.05.2008 and not for the period prior to that. Consequently, the demand of service tax prior to 16.05.2008 is not legally sustainable on this ground alone.

8. I find that in support of their contention, the appellant department has relied upon the judgement of the Hon'ble Supreme Court in the case of Commissioner of Service Tax Vs. Adani Gas Ltd – 2020 (40) GSTL 145 (SC). I find that the above decision of the Hon'ble Supreme Court in the Adani Gas case supra is squarely applicable to the facts of the present case. The relevant portion of the said judgement is reproduced as under :

> "**35.** With respect to the domestic consumers, the respondent, in their reply to the show cause notice, argued that under the PNGRB Network Tariff Regulations, 2008, entities such as the respondent are required to collect refundable interest-free security deposits towards safe-keeping of the meter and are to be refunded in full to the domestic PNG customer in case of a disconnection. The respondent argued that the PNGRB Network Tariff Regulations, 2008 further provide that the amount collected as interest-free refundable security deposit is to exist as a liability in their

books of account. In support of their contention, the respondent provided their Annual Report for the financial year 2008-09 which depicts the performance in terms of income and profitability. An extract of the report is provided below :

Performance Highlights :

During the year under review, your Company has shown resilience in the times of global economic showdown and has shown impressive performance in terms of Income and Profitability, which is summarized as under;

(Rs. In Lacs)

Particulars	**2008-09**	**2007-08**
CNG sales	13893.91	10670.00
PNG sales	16544.24	11971.76
Transportation Income	320.76	534.04
Gas Connection Charges	1395.96	1454.80
Oil & Lubricant sales	-	0.62
Other Income	351.23	687.51
Total Income	32506.09	25318.72
Total Expenditure	30928.10	22998.22
Prior Period Adjustment	2.51	7.70
Profit/(Loss) Before Tax	1575.48	2312.81
Provision for Tax	975.57	561.91
Profit/(Loss) After Tax	599.91	1750.90

Notes :
(1) The Company had received hedging income of Rs. 560 lacs in 2007-08 in 2008-09 no such extraordinary income has been received in the current year.
(2) Until now the Company was treating the entire amount received from domestic gas connections as income. However, in line with the PNGRB guidelines, the Company has treated an amount of Rs. 5,000/- per domestic customer as Refundable interest free Security Deposit this amount to Rs. 883.34 Lacs.

36. The above report provides that the respondent has treated an amount of Rs. 5000/- per domestic consumer as refundable interest-free security deposit amounting to Rs. 883.34 lacs. In assessing these rival contentions, the Adjudicating Authority held that :

> "...I find that the attempt of the said notice to align the Finance Act, 1994, with the Petroleum and Natural Gas Regulatory Board Regulations, 2008, to determine the taxability of a taxable event is not acceptable and goes in vain. Taxability of a service is governed under Section 65(105) of the Finance Act, 1994 and is not determined under any other Act or Regulations, unless and until the same is specifically provided in the definition given under Section 65(105) of the Finance Act, 1994. The taxability of a service is also not determined by the manner in which the Books of Accounts are maintained...."

37. We find ourselves in agreement with the findings of the Adjudicating Authority. The extent of the refund of gas connection charges collected from industrial, commercial and domestic consumers by the respondent depends on their usage. From the internal note dated 13 July, 2007 and the tabulation of customers provided above, it is evident that the percentage of funds refunded varies from customer to customer,

> while the remaining amount is retained by the respondent. In any case, as regards the domestic customers, no deposit receipts have been provided and instead, the respondent has relied on the tabulation of the refund of deposit to industrial consumers to support their contention. Thus, the argument of the respondent that these gas connection charges collected from industrial, commercial and domestic consumers constitute a refundable security deposit is rejected.
>
> **38.** Thus construed, we are of the view that the Adjudicating Authority was correct in concluding that the buyer of gas is as interested as the seller in ensuring and verifying the correct quantity of the gas supplied through the instrumentality of the measurement equipment and the pipelines. Additionally, the role of regulating pressure and ensuring the safety of supply of gas performed by the measurement equipment is an essential aspect for the 'use' of the consumer. The SKID equipment fulfils the description in Section 65(105)(zzzzj) of a taxable service : service in relation to "tangible goods" where the recipient of the service has use (without possession or effective control) of the goods."

8.1 In the instant case, it is an undisputed fact that the deposits received by the respondent from their customers are towards laying pipeline as well as providing other equipment to regulate and measure the gas supplied. Therefore, in view of the above judgement of the Hon'ble Supreme Court, I am of the view that the issue is no more *res integra* and the said judgement is squarely applicable to the facts of the present appeal. Accordingly, I am of the considered view that the deposits received by the respondent from their customers for laying pipeline for supply of gas as well as providing other equipment to regulate and measure gas supply is a consideration for providing service is and chargeable to service tax. However, as discussed in the foregoing paragraphs, the appellant department have sought to charge and demand service tax on the deposits received by the respondent on a entirely new ground which was not the basis for the SCN being issued to the respondent. While the SCN sought to demand and recover service tax under the category of Declared Services under Section 66E(e) of the Finance Act, 1994, in their appeal the appellant department have sought to charge and recover service tax under the category of 'supply of tangible goods services' in terms of Section 65(105) (zzzzj) of the Finance Act, 1994. This is clearly impermissible in law as it would amount to travelling beyond the SCN.

9. The respondent have raised the issue of limitation and contended that the demand is time barred. In this regard, I find that the deposits were collected by the respondent during the period during Financial Years 2008-09 and 2009-2010 and the same were converted into income during the Financial Years 2015-16 and 2016-17. These facts have been stated in the SCN as well as in the impugned order. I find that the appellant have also not disputed these facts. The question that arises, therefore, is at what point of time these deposits are taxable i.e. whether at the time of receipt of these deposits by the respondent from their customers or upon conversion of these deposits into income in the financial records of the respondent.

9.1 I find that the deposits which are consideration for service provided by the respondent were received during the F.Y. 2008-09 and 2009-10. The service relating to these deposits too would have been provided during the same period. Payment of Service Tax is in terms of Section 68 of the Finance Act, 1994 and the manner and period within which it has to be paid is prescribed in the Service Tax Rules, 1994. As per Rule 6 of the Service Tax Rules, 1994, (prior to its amendment w.e.f 01.04.2011), service tax was payable by the 5th or 6th, as the case may be, of the month immediately following the calendar month in which the payments are received, towards the value of taxable service. Therefore, the service tax would be payable during the period when the consideration for service provided was received. In the instant case, the deposits were undisputedly received during F.Y. 2008-09 and F.Y. 2009-10, therefore, the service tax would have been payable during the said period. However, the department issued a SCN on 10.06.2019 to the respondent proposing recovery of service tax on these deposits by invoking the extended period of limitation. It is not disputed or alleged by the department that the deposits were off the book transactions. On the contrary, the respondent have contended that all the deposits were properly recorded in their books of accounts, which has not be controverted by the department. Consequently, it cannot be alleged that

there was suppression of facts on the part of the respondent. Be that as it may, even otherwise the SCN has been issued beyond even the extended period of limitation. Therefore, the demand is not sustainable on the grounds of limitation.

10. In view of the above discussions and the decision of the Hon'ble Supreme Court, I hold that the impugned order is not legally tenable as the deposits received by the respondent from their customers for laying pipeline for supply of gas as well as providing other equipment to regulate and measure gas supply is a consideration for providing service and chargeable to service tax. However, I hold that the demand for the period prior to 16.05.2008 is not sustainable both on merits as well as limitation. I further hold that the demand for the period post 16.05.2008 is not sustainable on limitation.

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

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

25 November, 2021

(**Akhilesh Kumar**)
Commissioner (Appeals)

Date: .11.2021.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST & Central Excise,

Appellant

F No.GAPPL/COM/STD/34/2021

Division- Gandhinagar
Commissionerate : Gandhinagar

M/s. Sabarmati Gas Ltd,
Plot No. 907, Sector -21,
Gandhinagar. /

Respondent

Also at :

CNG Station, Bharat Petroleum Corporation Ltd
GSRTC Bus Depot, Pathik Ashram,
Gandhinagar .

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4. Guard File.
5. P.A. File.