आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN : **20220164SW000000D135**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/466/2021 /5552 TO 5556

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-83/2021-22**
दिनाँक Date : **04-01-2022** जारी करने की तारीख Date of Issue 06.01.2022

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

ग Arising out of Order-in-Original No. **38-39/D/GNR/KP/2020-21** दिनाँक: **16.02.2021** issued by Assistant Commissioner, CGST& Central Excise, Division Gandhinagar, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Hindustan Petroleum Corporation Ltd
1st Floor, Shree Balaji Alfa Bazar,
1, High Street, Law Garden,
Ahmedabad - 380009

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 मामलें 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 अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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.

(61) 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:
(clxvi) amount determined under Section 11 D;
(clxvii) amount of erroneous Cenvat Credit taken;
(clxviii) 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 M/s. Hindustan Petroleum Corporation Ltd, CNG Mother Station, Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 38-39/D/GNR/KP/2020-21 dated 16-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is engaged in the manufacture of Natural Gas (CNG) and holding Central Excise Registration No. AAACH1118BXM163. They are also holding Service Tax Registration No. AAACH1118BST085. In the course of the CERA audit of the records of the appellant for the period from April, 2011 to March, 2016, it was observed that there was a complete shutdown during the period from January, 2013 to August, 2013 and during this period neither any input material was received nor was any product manufactured. However, the appellant had during this period taken service tax credit of Rs.13,33,545/- on Manpower services and Transmission charges paid/payable to GSPL. These appeared to be inadmissible as the services availed during the shutdown period were not input services used towards providing output services nor were they used directly or indirectly towards manufacturing of any products.

2.1. It was further observed in the course of the audit that the appellant had availed and utilized service tax credit of Rs.4,49,842/- on account of deferred delivery service charged by GSPL during the F.Y. 2011-12 to F.Y. 2015-16. On verification of the agreement and invoices of GSPL, it was noticed that in case where a certain quantity of gas was requested by the appellant for delivery at their premises, the appellant while receiving the said quantity refused to take delivery of a certain quantity and GSPL charged a certain amount for not taking delivery of gas as requested and the same was termed as deferred delivery service charges. Hence, it appeared that the service tax was charged by GSPL on account of refraining from an act to do so. Hence, the service tax credit was not allowable as the deferred

delivery charges were paid on transportation charges of material for which no delivery was taken and no input was received, it was similar to purchase return. It, therefore, appeared that the service tax credit of Rs.4,49,842/- was required to be recovered from the appellant.

2.2 It was also observed in the course of the audit that the appellant had received Credit Note from GSPL on 08.08.2014 for service tax charged more that the tariff rate for the period from August, 2012 to July, 2014. Accordingly, service tax amounting to Rs.5,53,943/- was required to be reversed. The appellant instead of reversing the same with interest, adjusted it with the service tax credit available to it in next months. The appellant adjusted it without calculating and paying interest amounting to Rs.31,415/- which was also required to be recovered from them.

2.3 It was also observed in the course of the audit that the appellant had availed cenvat credit amounting to Rs.14,742/- in respect of the service tax paid on Rent-a Cab services, which has been excluded from the definition of input service and, therefore, the cenvat credit was inadmissible and required to be recovered.

2.4 The appellant was issued a SCN bearing F.No. V/WS06/SCN-43/HPCL/18-19 dated 18.10.2018 wherein it was proposed to demand and recover the Cenvat credit totally amounting to Rs.23,52,072/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944. Imposition of penalty under Section 11AC of the Central Excise Act, 1944 and Rule 15 (3) of the Cenvat Credit Rules, 2004 was also proposed.

2.5 The appellant was also issued another SCN bearing F.No. V/WS06/SCN-11/HPCL/2019-20 dated 09.05.2019 seeking to recover the cenvat credit amounting to Rs.2,08,544/- availed in respect of service tax paid on deferred delivery charges during the F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017) under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944. Imposition of penalty under Section

11AC of the Central Excise Act, 1944 and Rule 15 (3) of the Cenvat Credit Rules, 2004 was also proposed.

3. The said SCNs were adjudicated vide the impugned order and the demands in respect of the cenvat credit availed on the service tax paid on deferred delivery charges were confirmed along with interest and penalty. The demand for service tax in respect of the credit note issued by GSPL was also confirmed along with interest and the amount already paid was appropriated. The cenvat credit in respect of rent-a cab services was also confirmed along with interest and penalty.

4. Being aggrieved with the impugned order to the extent that it pertained to the confirmation of demand in respect of the cenvat credit of the service tax paid on deferred delivery charges, the appellant has filed the instant appeal on the following grounds :

i. They and GSPL entered into a Gas Transmission Agreement (GTA) for gas transmission. GSPL is engaged in transport of natural gas through pipeline and accordingly had obtained service tax registration in respect of transport of goods through pipeline. GSPL paid service tax and they had received input service of transport of goods through pipeline. The adjudicating authority has misconstrued the service of transport of goods through pipeline as refraining from an act to do an act and consequently disallowed cenvat credit of input service.

ii. They had in reply to the SCN specifically submitted that GSPL had provided transport of goods through pipeline and accordingly service tax was paid and invoice was raised. Had GSPL rendered service of agreeing to obligation to refrain from an act, they would not have issued service tax invoice showing category of service as transport of goods through pipeline.

iii. It was also contended that deferred delivery charges pertained to rescheduling of delivery and not to refusing delivery. The service received was relating to procurement of inputs and covered under the ambit of input service. Since charges of transport of goods through pipeline service rendered in respect of transmission or unauthorized overrun/positive and negative imbalance or deferred delivery forms

part of assessable value under Section 4 of the Central Excise Act, construing the same as service of agreeing to the obligation to refrain from an act is ex-facie illegal.

iv. The amount paid was for rescheduling of delivery and not for rejection of delivery. The charges pertain to transport of goods through pipeline service.

v. As per the definition of Deferred Delivery service provided in the amended GTA dated 14.05.2014, the deferred delivery service means service wherein the shipper (appellant) would inform day-wise plan for receipt of gas quantities into pipeline system and transporter would deliver such quantities on a deferred basis. Deferred delivery services are meant for regulating the transmission or transportation of gas and has nothing to do with the quantity to be accepted or not accepted by them.

vi. There is an agreement for gas transmission but there is no agreement to refrain from an act or to tolerate an act or situation. The adjudicating authority has failed to show the agreement pertaining to refrain from an act or to tolerate an act.

vii. It is well settled law that classification/assessments made at the end of service provider cannot be changed at the recipient's end to deny credit. They rely upon the judgment in the case of : Castex Technologies Ltd Vs. CCE & ST, Alwar – 2015 (44) STR 477 (Tri.-Del); Newlight Hotels & Resorts Ltd Vs. CCE & ST, Vadodara – 2016 (440 STR 258 (Tri.-Ahmd); GMR Airport Developers Ltd. Vs. CCE & ST, Hyderabad-IV – 2017 (4) GSTL 427 (Tri.-Hyd).

viii. The department has not challenged the classification or category of service rendered by GSPL. It is only the adjudicating authority who has mis-construed the classification of the service rendered by GSPL.

ix. The adjudicating authority has referred to Notification dated 17.02.2014 of the Petroleum and Natural Gas Regulatory Board and came to the conclusion that the charges towards imbalance management is agreeing to the obligation to refrain from an act service.

x. Imbalance Management Service has been defined under Rule 2 of the Regulations provided in the said notification dated 17.02.2014 to mean " such services that enable customers of shippers to manage their imbalance in an orderly fashion".

xi. Imbalance management is part and parcel of transport of goods through pipeline service and is covered under the GTA. GSPL as transporter has to manage and operate gas transportation facilities to meet with the requirement of the appellant as shipper. Similarly, at their end, the quantities of gas required cannot be regulated without imbalance management service.

xii. The phrase 'Deferred Delivery Services' used in the GTA has been construed in the impugned order as agreeing to the obligation to refrain from an act. However, no reason has been given for the same.

xiii. In para 2.1 of the amendment to agreement dated 14.05.2014 Deferred Delivery Services is defined to mean ' service offered by the Transporter to the shipper, subject to pipeline capacity available in the Transporter's system, under which the Transporter is informed of a day-wise plan for receipt of gas quantities in to the pipeline system by the Shipper and the Transporter agrees to deliver such quantities on a deferred basis to the shipper'.

xiv. As such the deferred delivery service is management of transportation of gas on a deferred manner and is meant for regulating the transportation of gas.

xv. The cenvat credit availed on transport of gas through pipeline was Rs.6,36,257/- however, the demand was raised for Rs.6,58,386/-. The cenvat credit amounting to Rs.22,130/- pertained to Cess, which was not taken by them.

xvi. The demand is time barred as the SCN was issued on 18.10.2018 and 09.05.2019 for the period 2011-12 to 2015-16 and April, 2016 to June, 2017 respectively. The Central Excise Audit party had audited their records from time to time. As such the department was well aware of all the material facts. Consequently, the allegation of suppression of facts cannot be held against them. They rely upon the decision in the case of CCE, Pune-I Vs. Thyssenkrupp Industries India Ltd – 2017 (48) STR 81 (Tri.- Mumbai).

xvii. They being a Government of India enterprise, the allegation of suppression of facts with intent to evade duty cannot be held against them. They rely upon the decision in the case of Nalco Vs. CCE, BBSR-I – 2016 (343) ELT 1005 (Tri.-Kolkata); Indian Petrochemicals

Corporation Ltd. Vs. CCE, Vadodara – 2009 (237) ELT 317 (Tri.-Ahmd).

xviii. The adjudicating authority has erred in imposing penalty under Rule 15 (3) of the CCR, 2004. Penalty under the said rule cannot be imposed against the manufacturer. The said rule provides for imposition of penalty on the output service provider.

5. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri P.G.Mehta, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further stated that he would make additional written submissions.

6. The additional written submissions filed by the advocate of the appellant on 18.11.2021 is basically a reiteration of the submission made in the appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issue before me for decision is as whether the credit of the service tax paid on the deferred delivery charges is admissible to the appellant or otherwise. The demand pertains to the period F.Y. 2011-12 to 2015-16 and F.Y. 2016-17 to F.Y 2017-18 (upto June, 2017).

8. It is observed that in the impugned order the adjudicating authority has recorded at Para 12 that there are two sets of invoices issued by GSPL to the appellant. During the period F.Y. 2011-12 to F.Y. 2015-16, the invoice shows the charges towards " Unauthorized Overrun/Positive & Negative Imbalance". Further, the invoice pertaining to the period F.Y. 2016-17 to F.Y. 2017-18 shows the charges towards " Deferred Delivery Services". I find that the adjudicating authority has concluded that Deferred Delivery Services is a service given by GSPL to the appellant for the quantity which could not be accepted by the appellant owing to various reasons on the particular day. The adjudicating authority has, based on this conclusion, proceeded to treat the same as service in terms of Section 66E (e) of the Finance Act, 1994 i.e.

'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'.

9. I find that the adjudicating authority has in Para 13 of the impugned order referred to Para 4 of the Notification dated 17.02.2014 issued by the Petroleum and Natural Gas Regulatory Board, New Delhi (PNGRB). The said Para 4 is reproduced as under :

> "(1) A transporter shall provide, to the extent it is technically and operationally feasible, imbalance management services being deferred delivery services to facilitate shippers to manage transportation imbalances. For this purpose, a deferred delivery service is one under which a transporter and a shipper, under a separate agreement, agree on a day-wise plan for receipt of the shipper's natural gas quantities into the pipeline and for its delivery by the transporter to shipper on a deferred basis after a few days subject to pipeline capacity availability.
>
> (2) The transporter shall provide the facility of the imbalance management services referred to in sub-regulation (1) on a non-discriminatory basis but without affecting its ability to meet the rights and obligations under its gas transportation agreements with other shippers.
>
> (3) The transporter may charge a fee for providing the imbalance management services referred to in sub-regulation (1) from the shipper utilising such service where the charge for the service shall be based on the number of days such service is utilised.
>
> (4) The transporter in its agreement with the shipper shall mention the charges for the imbalance management services referred to in sub-regulation (1) but such charge shall not exceed twenty five per cent. of the applicable transportation tariff for the relevant natural gas pipeline.
>
> (5) The amount received by the transporter from the imbalance management services referred to in sub-regulation (1) shall be allowed to be retained by it over and above the transportation tariff for the pipeline in accordance with the provisions of the relevant regulations of the Board."

9.1 To understand the terms used in the above Para 4 of the said notification, it would be useful to refer to the meanings of the various terms, relevant to the issue on hand, as per the regulations issued by PNGRB. Imbalance Management services has been defined in Clause 2(1) (d) of the said notification to mean :

> "Imbalance Management Services" means such services that enable customers or shippers to manage their imbalances in an orderly fashion;

9.2 The phrase 'Deferred Delivery service' is contained in Para 4 (1) of the said notification and means :

> "one under which a transporter and a shipper, under a separate agreement, agree on a day-wise plan for receipt of the shipper's natural gas quantities into the pipeline and for its delivery by the transporter to shipper on a deferred basis after a few days subject to pipeline capacity availability".

9.3 To understand the term 'Overrun", I refer to Para 8 (3) (a) of Notification dated 28.08.2014 issued by the PNGRB, which is reproduced as under :

> "An overrun occurs when a shipper takes gas transportation quantities in excess of scheduled capacity. All overruns shall be treated as unauthorized and attract unauthorized overrun charges."

9.4 The phrase Positive Imbalance and Negative Imbalance are explained in Para 13 (2) and (4) of Notification dated 17.07.2008 issued by PNGRB, the said Para is reproduced as under :

> " (2) If the shipper off-takes less quantity of gas from the pipeline system than injected into it, then, the shipper is creating positive imbalance and it shall be allowed a cumulative positive imbalance of ten per cent of allocated capacity as tolerance limit."
>
> " (4) If shipper off-takes more quantity of gas from the pipeline system than injected into it, then, the shipper is creating negative imbalance and the shipper shall be allowed a cumulative negative imbalance of five per cent of allocated capacity as a tolerance limit."

9.5 From a plain reading of the above terms and phrases, it is clearly evident that the charges collected by GSPL from the appellant, be it towards Unauthorized Overrun/Positive & Negative Imbalance or Deferred Delivery services, are all towards the transportation of gas through pipeline. It is clear from the above that if the appellant takes delivery of less quantity and is creating a positive imbalance, he is charged by GSPL for the same in terms of the GTA. Similarly, if the appellant takes delivery of more quantity and is creating a negative imbalance, he is charged by GSPL for the same in terms of the GTA. It is also clear from the above that Deferred Delivery service is a day-wise plan for receipt of the appellant's gas quantities into the pipeline of GSPL and for its delivery by GSPL to the appellant on a deferred basis. This in no way can be construed to mean a purchase return as alleged in the SCN issued to the appellant. Further, what is undeniable is that Unauthorized Overrun/Positive & Negative Imbalance or Deferred Delivery services are all

pertaining to the transportation of gas through pipeline in terms of the GTA between the appellant and GSPL. It can under no stretch of imagination be construed to be a service falling within the ambit of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'. Consequently, the charges collected by GSPL from the appellant towards Unauthorized Overrun/Positive & Negative Imbalance or Deferred Delivery services also cannot be termed to be consideration for the said taxable service as defined under Section 66E (e) of the Finance Act, 1994.

10. I also find merit in the contention of the appellant that the classification/assessment of the service cannot be changed at the recipient's end. The service provider in the instant case is GSPL and the appellant is only a service recipient. Therefore, without the classification/assessment of the service being changed at the end of the service provider, the appellant cannot be denied the benefit of cenvat credit by changing the classification/assessment of the service received by them.

11. I further find that the SCN on this issue covers the period from F.Y. 2011-12 to F.Y.2015-16 and the SCN was issued on 18.10.2018. Therefore, the period prior to October, 2013 is beyond even the extended period of limitation of five years. It is further observed that in respect of the SCN for the period April, 2016 to June, 2017, the extended period of limitation has been invoked, which is legally unsustainable. Once the department had issued a notice for the earlier period it means that the facts were within the knowledge of the department, and, therefore, it cannot any more be alleged that the appellant had suppressed the facts from the department. Accordingly, extended period of limitation is not available for issuing a notice on the same issue for the subsequent period. The department was, therefore, required to issue a notice for the subsequent period within the normal period of limitation of thirty months. Applying the normal period of limitation, I find that a part of the demand raised by the notice dated 09.05.2019 is also barred by limitation.

12. In view of the facts discussed herein above, I hold that the cenvat credit of the service tax paid on 'Unauthorized Overrun/Positive & Negative Imbalance' or 'Deferred Delivery services' charges has been rightly availed by

the appellant as the same pertains to transportation of gas through pipeline and not towards the service of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'. I, therefore, hold that the demand confirmed against the appellant vide the impugned order is not legally sustainable. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

13. Accordingly, the impugned order is set aside for not being legal and proper and the appeal filed by the appellant is allowed.

14. 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.

(**Akhilesh Kumar**)
Commissioner (Appeals)
Date: 14.01.2022.

Attested:

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

BY RPAD / SPEED POST

To

M/s. Hindustan Petroleum Corporation Ltd, Appellant
CNG Mother Station, Gandhinagar

The Assistant Commissioner, Respondent
CGST & Central Excise,
Division- Gandhinagar,
Commissionerate : 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.