



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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- टेलीफैक्स 07926305136



DIN : 20220264SW000000E83C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/288/2021 / 6000 - 6000
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-90/2021-22
दिनांक Date : 21-01-2022 जारी करने की तारीख Date of Issue 07.02.2022
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 28/D/GNR/KP/2020-21 दिनांक: 26.11.2020 issued by Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat State Petroleum Corporation Ltd
GSPC Bhavan, Behind Udyog Bhavan,
Sector-11, Gandhinagar-382016

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:

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

(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 दिनोंक 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 रुपये या उससे कम होतो रुपये 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 2ndमाला, 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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

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

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

- (68) 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.

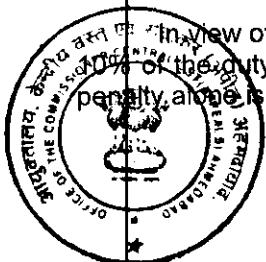
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (clxxxvii) amount determined under Section 11 D;
- (clxxxviii) amount of erroneous Cenvat Credit taken;
- (clxxxix) 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."

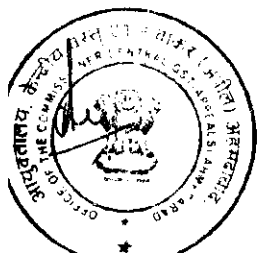


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Gujarat State Petroleum Corporation Limited, GSPC Bhavan, Sector-11, Gandhinagar-382 010 (hereinafter referred to as the appellant) against Order in Original No. 28/DGNR/KP/2020-21 dated 26-11-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are engaged in the exploration of Oil and Gas and holding Service Tax Registration No. AABCG4502FST001. During the course of audit of the records of the appellant for the period from April, 2016 to June, 2017, it was observed that the appellant had not made payment of service tax on Royalty payment of Rs.1,85,11,240/- made to the Governmental authority for use of natural resources i.e. exploration activity done on government land. In view of Sr. No. 6 of Notification No. 30/2012-ST dated 20.06.2012, the service provided by the governmental authority is taxable under reverse charge mechanism. Further, Circular No. 192/02/2016-Service Tax dated 13.04.2016 issued by the CBIC also clarified that service tax will be payable on the right to use natural resources in view of Rule 7 of the Point of Taxation Rules, 2011, as amended by Notification No. 24/2016-ST dated 13.04.2016.

2.1 It appeared that government had provided service to the appellant and received consideration in the form of Royalty, which was to be paid by the appellant for the right to use the natural resources. It appeared that the said service was within the ambit of Section 65B (44) and (51) of the Finance Act, 1994. As per Rule 2 (1) (d) (i) (E) of the Service Tax Rules, 1994, the recipient of the service was required to pay the service tax. The service tax payable by the appellant was ascertained at Rs.27,76,686/-.

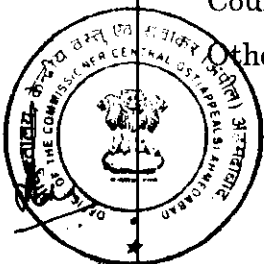


2.2 The appellant was issued SCN bearing No. 238/19-20 dated 24.01.2020 from F.No. VI/1(b)-168/IA/C-VIII/Mis/19-20 proposing to demand and recover the service tax amounting to Rs.27,76,686/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994. Imposition of penalty under Section 78 (1) of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994.

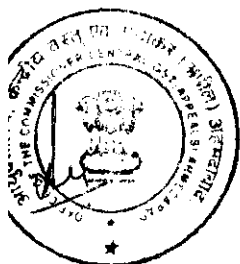
4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

- i. Royalty is not a payment in respect of any taxable service at all and is imposed under Section 9 of the Mines and Minerals (Development and Regulations) Act, 1957 in respect of any mineral removed or consumed by the holder of a mining lease from the leased area at the rate specified in the Second Schedule. It is to be computed on ad valorem basis in the manner prescribed under Rule 64D of the Mineral Concession Rules. Clearly, therefore, royalty is a price for winning minerals from and land and represent's the State's share in such minerals and there is no provision of any service by the state in this respect. The levy of service tax is clearly ultra vires the Act.
- ii. A seven judge bench of the Hon'ble Supreme Court in the case of India Cement Ltd. & Others Vs. State of Tamil Nadu & Others – (1990) 1 SCC 12 held that royalty is a tax and as such a cess on royalty being a tax on royalty is beyond the competence of the State legislature. The Hon'ble Supreme Court had doubted the correctness of this judgment in the case of State of W.B. Vs. Kesoram Industries Ltd. & Others – (2004) 10 SCC 201. Thereafter, the Hon'ble Supreme Court had, in the case of Mineral Area Development Authority & Others Vs. Steel Authority of India & Others – (2011) 4 SCC 450,



referred the matter to a larger bench of nine judges for deciding the issue.

- iii. The Hon'ble Gujarat High Court had in the case of Gujmin Industry Association Vs. UOI in C/SCA/8167/2017 stayed the demand of service tax on grant of mining lease/royalty.
- iv. In the case of Goa Mining Association Vs. UOI and Others, the Mumbai High Court at Goa had stayed the imposition of service tax on royalties under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957. A similar stay has come from Madras High Court.
- v. In view of the above, no service tax is payable on royalty paid by the company to the government. Accordingly, no interest is also payable by them.
- vi. The SCN is issued for extended period on the ground of willful suppression of facts. They are a Government of Gujarat Undertaking and being a PSU, there cannot be any malafide intention or suppression of facts nor motive of fraud.
- vii. They rely upon the decisions of the Hon'ble Tribunal in the case of Bharat Sanchar Nigam Limited Vs. Commissioner of Service Tax – 2009 (15) STR 352 (Tri.-Ahmd); U.P. State Sugar & Cane Development Corporation Ltd. Vs. Commissioner of Central Excise, Allahabad – 2009 (242) ELT 260 (Tri.-Del.); Hindustan Petroleum Corporation Limited Vs. CCE, Calcutta-I – 2001 (136) ELT 943 (Tri.-Kolkata).
- viii. Extended period can only be invoked in cases of fraud, collusion, willful mis-statement, suppression of facts with intent to evade payment of service tax. They have not indulged in any of the aforesaid to justify invocation of extended period of limitation.
- ix. Imposition of penalty is not a mechanical process or cannot be imposed just because it is legitimate to levy penalty. The element of mens rea or malafide intent must be necessarily present to justify imposition of penalty. They are a Government of Gujarat undertaking and there cannot be any malafide intention of suppression of facts nor motive of fraud.



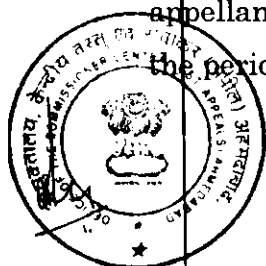
x. They rely upon the decision of the Hon'ble Supreme Court in the case of UOI Vs. Rajasthan Spinning and Weaving Mills – 2009 (238) ELT 3 (SC).

5. The appellant filed additional written submission vide letter dated 28.12.2021, inter alia submitting that :

- They rely upon the judgment of the Orissa High Court in the case of Tarini Minerals (P) Ltd. Vs. UOI – 2020 (50) GSTL 494 (Ori.). They also rely upon the judgment in the case of Sunita Ganguly Vs. Principal Commissioner of CGST & Central Excise, Ranchi – 2020 (50) GSTL 401 (Jhar.).
- The Hon'ble Tribunal in the case of Innovative Instruments Pvt Ltd Vs. CCE, Vadodara – 2008 (232) ELT 460 (Tri.-Ahmd) held that extended period cannot be invoked there being conflicting decisions on the issue.
- They also rely upon the decision in the case of ; CCE, Delhi Vs. Soni and Toni Electrical – 2007 (217) ELT 457 (Tri.-Del); Hindalco Industries Limited – 2003 (161) ELT 346 (Tri.-Del.)

6. Personal Hearing in the case was held on 28.12.2021 through virtual mode. Shri Anil Chauhan, Authorised Representative, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and additional written submission.

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 whether the Royalty paid by the appellant to the government is a 'consideration' and whether the right to explore and extract oil and natural gas given by the government to the appellant is a service or otherwise. The demand for service tax pertains to the period from April, 2016 to June, 2017.



7.1 In the negative list of services regime introduced from 01.07.2012, 'service is defined under Section 65B (41) of the Finance Act, 1994 to mean :

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include —".

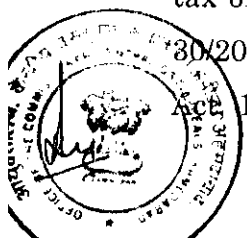
7.2 In the instant case, the appellant is given the right to explore and extract Oil and Gas – a natural resource by the government and for assignment of such right the appellant are required to pay a Royalty to the government. The fact that the assignment of right to use is a service is also forthcoming from Sr.No. 61 of Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No. 22/2016-ST dated 13.04.2016. The said Sr. No.61 reads as :

"Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016 :

Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource;"

7.3 The above said Notification No. 25/2012-ST dated 20.06.2012 is an exemption notification. However, the implication of the said exemption notification is that the 'assignment of right to use any natural resource' by the government is a taxable service and, therefore, the necessity of providing for exemption by way of a notification. It, therefore, is amply clear that by assigning the right to explore and extract oil and natural gas to the appellant, the government has provided a taxable service. For being assigned the right to use the natural resource, the appellant are required to pay the government a Royalty, which is nothing but a consideration paid by the appellant in lieu of the service provided by the government to the appellant.

7.4 Section 68 of the Finance Act, 1994 provides for payment of service tax on reverse charge basis and in terms of Sr. No. 6 of Notification No. 30/2012-ST dated 20.06.2012, issued under Section 68 (2) of the Finance Act, 1994, in respect of services provided or agreed to be provided by the



Government or local authority, the recipient of the service is liable to pay 100% of the applicable service tax. Therefore, in the instant case, the appellant, being the recipient of the service provided by the government, is liable to pay the service tax on service received by them i.e. assignment of right to use the natural resources. I further find that Sr.No. 61 of Notification No.25/2012-ST dated 20.06.2012 exempts only the onetime charge payable for assignment of the right to use and not the royalty paid from time to time upon extraction of the natural resource. Accordingly, the appellant are liable to pay service tax, under reverse charge, on the royalty paid to the government as consideration for the service received by them i.e. assignment of the right to use the natural resource.

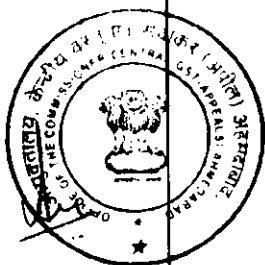
8. I find that the appellant have relied upon the judgments of the Hon'ble High Court of Gujarat, Orissa, Jharkand and Mumbai supra and submitted that the demand of service tax has been stayed. In this regard, I find that these judgments of the Hon'ble High Courts have all been passed by following the decision of the Hon'ble High Court of Rajasthan in the case of Udaipur Chambers of Commerce and Industry Vs. UOI – 2018 (8) GSTL 170 (Raj.). Further, in their judgments, the Hon'ble High Court have only stayed recovery of Service tax.

8.1 The Hon Hon'ble High Court of Rajasthan in the case of Udaipur Chambers of Commerce and Industry Vs. UOI – 2018 (8) GSTL 170 (Raj.) had held that :

“17.We have scaled merits of the argument advanced by taking into consideration all relevant provisions.

18.As per Section 9 of the Act of 1957, the holder of a mining lease notwithstanding anything contained in the instrument of lease or in any law in force is supposed to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate the time being specified in the Second Schedule in respect of that material. In light of the provision aforesaid, the mining operations by a mining lease holder are absolutely dependent to payment of royalty and no mining activity by any mining holder shall be valid without payment of royalty. Any mining operation not followed by payment of royalty is subject to penalty also under the Act of 1957 and the Rules framed thereunder.

19.Precisely, we are required to examine that the royalty under the Act



of 1957 is a "consideration" or not and further if that is "consideration", then what would be the effect pertaining to payment of service tax?

20. Under the Act of 1957, no mining lease would be granted without adhering the procedure given under Sections 10 to 12. The prospecting licence and mining leases are further regulated by the Rules framed under Sections 13 and 13A of the Act of 1957. As per the Mineral Concession Rules, 1960 (hereinafter referred to as "the Rules of 1960"), prospecting licence in respect of land in which minerals vest in the Government, can be granted by adhering the procedure given in Chapter III and further mining lease can be granted only after adhering the procedure prescribed under Chapter IV of the Rules of 1960. At the threshold, applications for granting mining lease are required to be entertained by the State Government in the prescribed format and further after adhering a definite procedure, mining lease is required to be granted and executed between the parties. The mining lease executed is nothing but a contract to undertake mining operations in the leased mining area.

21. As already stated, the mining operations, as per the conditions of mining lease deed, are subject to payment of royalty. According to Section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise. In general, "consideration" is the price for a promise and is an essential ingredient for a contract. It is a value received as incentive for the promise and a contract without that is not binding on the parties. It is a vital element and benefit i.e. to be settled between the parties and also an essential reason for a party entering into contract for exchange of any thing of value by each party.

22. Taking into consideration all these principles relating to "consideration", we are of considered opinion that the royalty is nothing but a "consideration" to have mining operations in the leased area on execution of a mining lease. It is a part of agreement arrived between the parties to have lease of a mining area to undertaking mining operations. The royalty being "consideration" certainly places assignment of right to use natural resources deposited in the leased area as a "service" as defined under Section 65B(44) of the Act of 1994, according to which, any activity carried out by a person for another for consideration is a service. The finding arrived by us as above is sufficient to say that the notification dated 13-4-2016 is not at all in conflict with its enabling Act i.e. the Finance Act, 1994 and the same does not suffer from any illegality.

23. On arriving at the conclusion that the activity in question is a service, there is no need to examine the other argument advanced by counsel for the petitioners to challenge the notification aforesaid on the ground that the assignment of right to use natural resource i.e. the mineral deposited in the leased area is also not a "declared service".

24. An effort is also made to bring assignment under consideration in exclusion category with submission that by awarding lease the State transfers its title in goods in other manner than the sale or gift, as such, no service tax could have been claimed. This argument too, in our opinion, is bereft of merits as the term "goods" is defined under Section 65(50), assigning the same meaning as given under clause (7) of Section 2 of the Sale of Goods Act, 1930, according to that, it is every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be served before sale or



under the contract of sale. The assignment of right to use any natural resource i.e. mineral cannot be treated as a goods for the purpose of the Act of 1994.

25. There is no transfer of immovable property too as the lease granted is only to excavate mineral from the leased area and that activity at the most can be physical transfer of property by its "renting" as prescribed under Section 65(90a) of the Act of 1994, but not the transfer of title in immovable property. Section 65(90a) pertains to transfer of immovable property by renting and that includes leasing of immovable property for use in furtherance of business and commerce. The absence of the word "title" in this provision is quite important and that indicates the entire activity as transfer of possession of the immovable property for its use or consumption by way of renting, letting, leasing, licensing or by other similar arrangements, as the case may be. The exclusion under Section 65B(44) is for transfer of title in immovable property, which is conspicuously absent in the grant of lease for mining operations. The [title] of the mining area admittedly retains with the State even on execution of mining lease to excavate mineral from the leased area.

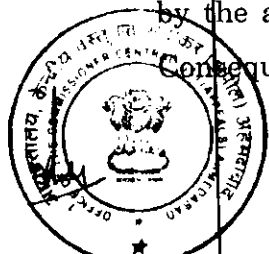
26. For the reasons given above, the petitions for writ are bereft of merits, hence, dismissed."

8.2 It is observed that in their judgment the Hon'ble High Court has held that royalty being "consideration" places assignment of right to use natural resources deposited in the leased area as a "service" as defined under Section 65B(44) of the Act of 1994.

8.3 The above judgment of the Hon'ble High Court of Rajasthan was carried in appeal to the Supreme Court and the Hon'ble Supreme Court, while issuing notice in the case, has only stayed the payment of service tax on grant of mining lease/royalty.

8.4 I further find that the Hon'ble High Court of Gujarat had in the case of Gujmin Industry Association Vs. UOI – 2019 (20) GSTL 11 (Guj.) only stayed the payment of service tax on grant of mining lease/royalty.

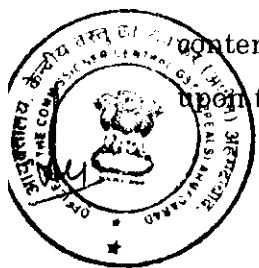
8.5 In view of the above facts and by following the judgment of the Hon'ble High Court of Rajasthan in the Udaipur Chambers of Commerce and Industry, supra, I am of the considered view that the assignment of right to use the natural resource is a taxable service and the royalty paid by the appellant to the government is consideration for the said service. Consequently, the appellant are liable to pay service tax under reverse



charge in terms of Sr. No. 6 of Notification No. 30/2012-ST dated 20.06.2012.

9. The appellant have also contested the demand on the grounds of limitation and contended that extended period of limitation cannot be invoked as the ingredients for invoking the same are not satisfied and that they are a Government of Gujarat undertaking, so intent to evade payment of service tax cannot be alleged. In this regard, I find that the appellant is registered with Service Tax department and are expected to follow the law governing the service tax. In the era of self-assessment, the responsibility of the tax payer to comply with the requirement of disclosure of information is all the more greater. Further, despite there being an exemption only in respect of the onetime charge payment for assignment of right to use the natural resource, the appellant have failed to declare the value of the taxable services and pay the applicable service tax under reverse charge. Therefore, I am of the view that that charge of suppression of facts is applicable and, hence, the extended period has been correctly invoked.

10. The appellant have also challenged the imposition of penalty under Section 78 (1) of the Finance Act, 1994 on the grounds that there was no mens rea. In this regard, I find that despite the appellant receiving a service from the government by way of assignment of right to use natural resource, they have failed to declare the value of the taxable services and pay the applicable service tax under reverse charge. Further, though there was an exemption only in respect of the onetime charge payment for assignment of right to use the natural resource, the appellant have failed to declare and pay service tax under reverse charge. As stated earlier, in the era of self assessment, the onus is on the assessee to ascertain their correct service tax liability and discharge the same. Having failed to do so, the appellant cannot have any rightful claim to there being no mens rea on their part. I am, therefore, of the view that there is no merit in the contention of the appellant and the penalty has been correctly imposed upon them.



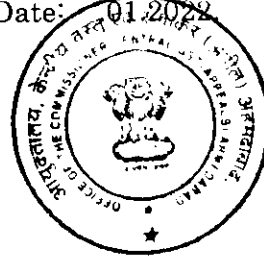
11. In view of the above, I hold that appellant are liable to pay service tax, on the Royalty paid by them for the right to use the natural resource, under reverse charge. In view thereof, I do not find any infirmity in the impugned order. Therefore, the impugned order is upheld and the appeal filed by the appellant is rejected.

12. 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: 01.01.2022



Attested:

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

BY RPAD / SPEED POST

To

M/s. Gujarat State Petroleum Corporation Limited, Appellant
GSPC Bhavan, Sector-11,
Gandhinagar-382 010

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

Respondent

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.