

**AUTHORITY FOR ADVANCE RULINGS (CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX), NEW DELHI**

30th Day of March, 2012

P R E S E N T

**Mr. Justice P.K. Balasubramanyan (Chairman)
Mr. Y.G. Parande (Member)**

Order No. AAR/ST/04-05/2012

In

**Applications No. AAR/44/ST/10/11
AAR/44/ST/11/11**

Name & address of the applicant : **M/s. GSPL India Transco Ltd.**
GSPC Bhavan, B/H Udyog Bhavan,
Sector-11, Gandhinagar-382010

M/s. GSPL India Gasnet Limited,
GSPC Bhavan, B/H Udyog Bhavan,
Sector -11, Gandhinagar-382010

Commissioner concerned : The Commissioner of Central Excise
Ahmedabad-III, Commissionerate
2nd floor, Custom House,
Near All India Radio, Navrangpura,
Ahmedabad – 380009, Gujarat

Present for the applicants : Mr. Sujit Ghosh, Advocate

Present for the Commissioner : Mr. Amresh Jain, Dy. Commissioner (AR)

ORDER

1. These applications are filed before this Authority invoking Section 96(C) of the Finance Act, 1994. According to the applicants, they being subsidiaries of Gujarat State Petronet Limited, which itself is a subsidiary of Gujarat State Petroleum Corporation Limited, are eligible to apply in terms of the notification issued under section 96A(b)(iii) of the Act. As far as the applicants are concerned, the transactions on which they have sought rulings are proposed

transactions and no proceeding against them was pending before any Officer, Appellate Tribunal or any Court.

2. On behalf of the department, objection to maintainability of the applications and the entertainability of the applications are raised. It is contended that the applicants, being subsidiaries of a subsidiary of a Government company, are ineligible to apply for advance ruling. It is also contended that the questions, identical to the ones sought to be raised by the applicants, are pending before the Customs, Excise, Service-tax Appellate Tribunal at the instance of the company of which the applicants are subsidiaries and in view of that, the present applications raising the identical questions for rulings are barred by the proviso to Sub-section 2 of Section 96D of the Act. For good measure, it is added that the applicants themselves have been created for the purpose of seeking a ruling so as to overreach the decision that may be rendered by the CESTAT in the appeals filed by the holding company of the applicants.

3. These contentions are met by the applicants by pointing out that by definition, a Government company includes a subsidiary and a subsidiary to a subsidiary would also be a Government company. It is further contended that the bar under the proviso to Section 96D(2) of the Act would be attracted only when a proceeding is pending in the applicant's case and admittedly, there is no case that any proceeding was pending against the applicants.

4. Section 96A(b) defines an applicant, inter alia, to mean, a resident falling within any such class or category of persons as the Central Government may by notification in the Official Gazette specify in that behalf. Vide notification no. 27/2009-ST, a public sector company has been notified. The said notification reads,

“In exercise of the powers conferred by sub-clause (iii) of clause (b) to Section 96A of the Finance Act, 1994 (32 of 1994), the Central Government hereby specifies any public sector company as class of persons for the purpose of the said clause. Explanation – for the purpose of this notification, “public sector company” shall have the same meaning as is assigned to it in clause 36A of Section 2 of Income-tax Act, 1961 (43 of 1961)”.

Section 2 (36A) of the Income-tax Act, in turn, defines:

‘a public sector company’ as meaning” any cooperation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).”

Section 617 of the Companies Act provides,

“For the purpose of this Act, Government company means any company in which not less than 51% of the paid up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as, thus, defined”.

5. It is the case of the applicants that a provision like section 96C of the Act, should be liberally construed so as to advance the remedy and if interpreted in that background, the expression, 'subsidiary' occurring in section 617 of the Companies Act adopted for the purpose of the Act, should be broadly interpreted so as to include the subsidiary of a subsidiary. The case of the department is that, subsidiary of a Government company itself becomes a Government company only by virtue of the inclusive part of the definition in section 617 of the Companies Act and there is no warrant for including the subsidiary of a subsidiary within that definition.

6. Then coming to the other objection regarding the pendency of an appeal before the CESTAT at the instance of the holding company of the applicants raising the same question, it is contended that the applicants are entirely different from the holding company and since in their case, no proceedings were pending, the bar contained in clause (a) of the proviso to section 96D(2) of the Act would not be attracted. In other words, the applicants seek to establish an identity independent of the holding company for this purpose, whereas they seek to attach themselves to the strings of the holding company for the purpose of claiming the competence to approach this Authority. The department in this context, in addition to highlighting the above, also points out that the question pending before the CESTAT was identical to the one that is sought to be raised by the applicants before this

Authority and if the contention of the applicants is accepted, it will lead to an incongruous situation and possibly a conflict of decisions on the identical question and such a situation is obviously to be avoided.

7. For the purpose of these applications, we do not think that it is necessary to finally adjudicate on the question whether a subsidiary of a subsidiary of a Government company, could invoke the jurisdiction of this Authority for advance ruling or not. We prefer to rest our decision on the discretion we have under section 96D(2) of the Finance Act, 1994 to allow or disallow an application for an ultimate ruling under section 96D(4) of the Act. As observed by the Authority for Advance Rulings (Income-tax) in the case of the ruling relating to M/s. Microsoft Operations Pte. Limited, In re (310 ITR 409), the Authority for Advance Rulings, has a discretion either to admit or allow the application for rendering an advance ruling, apart from the bar created by the proviso to the relevant section of the Act, here, Section 96D(2) of the Act. The Authority took the view that once the existence of the conditions specified by any one of the clauses barring the jurisdiction of the Authority is established, the Authority was bound to reject the application. It was not open to the Authority to ignore the legal bar.

The Authority then proceeded to hold:

“However, it does not follow that the application is bound to be admitted and heard on merits once the factors set out in the proviso do not come in the way of admission. Still the Authority has the discretion to reject the application, of course, on germane and weighty considerations. That discretion has to be exercised judiciously keeping in view the spirit and purpose of the provisions

concerning advance ruling. The discretion may be invoked in exceptional cases but power to reject on grounds not expressly spelt out by the Statute cannot be ruled out. In other words, the proviso to section 245R(2) does not have the effect of taking away the discretion to reject the application on other unspecified grounds. However, as said earlier, the exercise of discretion must be canalized on proper lines. Avoiding abuse of legal process, incompatible decisions concerning the same parties and anomalous situations are relevant considerations that guide the exercise of discretionary power to reject the application. For instance, in spite of a direct decision of the Supreme Court settling the point against an applicant, if the applicant seeks advance ruling with a view to stall further proceedings, it may then be a fit case to reject the application at the stage of consideration under section 245R(2). Another instance that can be visualized is in a case where the applicant raises frivolous or hypothetical legal issues without factual foundation.

8. In this case, admittedly, the questions sought to be raised before us are pending before the CESTAT, though at the instance of the holding company of the applicants. If we go by the argument of the applicants before us, our ruling to be given, will only bind the applicants and the authorities under the Act would be bound to implement the ruling only in the case of the applicants. That would mean that in the appeal filed by the holding company of the applicants involving the identical questions, the CESTAT is free to render a ruling ignoring what is being ruled by this Authority. That according to us, could lead to incompatible decisions concerning the same question, being rendered by two different Authorities on an identical transaction. In the facts and circumstances of this case, we think that such a situation should be avoided. This will be in furtherance of the spirit of enacting the bar to the jurisdiction of this Authority to entertain an

application for advance ruling, when the identical question is pending before an authority under the Act, the Tribunal or Court.

9. We are in respectful agreement with the view taken by the Authority for Advance Rulings (Income-tax) in the above quoted ruling and applying the principle accepted therein, hold that we should exercise our discretion not to allow this application under section 96D(2) of the Act for the purpose of giving a ruling under section 96D(4) of the Act. We, thus, reject these applications in exercise of our discretion.

8. Accordingly, the order is pronounced on this, 30th day of March, 2012.

Sd/-

(Y.G. Parande)
Member

Sd/-

(P.K. Balasubramanyan)
Chairman