

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:
Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)

The 3rd day of July, 2015

Ruling No. AAR/ST/02-03/2015
In
Application Nos. AAR/44/ST/03/13
AAR/44/ST/05/13

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

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

Present for the applicant : Shri Sujit Ghosh, Adocate

Present for the Department : Shri Amresh Jain(AR)

Ruling

M/s GSPL India Transco Limited (F.No. AAR/44/ST/03/13) and M/s GSPL India Gasnet Limited (F.No. AAR/44/ST/05/13) (hereinafter referred to as applicant) are a subsidiary of Gujarat State Petronet Limited (GSPL), which is a Government Company under the Companies Act, 1956. As the facts and question, on which Advance Ruling sought, is same in respect of above referred applicants, both applications are taken up for common ruling.

2. Both these cases had a checkered journey so far. Applicants filed applications before this Authority on 13.12.2011. However, the applications were rejected vide order dated 30.03.2012 as not maintainable. Thereafter, the applicants filed writ petition

against aforesaid order of this Authority before the Hon'ble Gujarat High Court, who vide order dated 29.08.2012 allowed the writ petition and instructed this Authority to hear the applicant on merits. In the interim, Service Tax laws in India were replaced by a comprehensive Service Tax regime with effect from 01.07.2012. Due to these changes, the applicants filed corrigendum to the original applications on 12.11.2012. However, on the instructions of this Authority, fresh applications dated 01.03.2013 were filed, i.e. present applications. This Authority vide Order dated 16.01.2015 restored the applications, which were dismissed earlier for non-prosecution on 21.04.2014.

3. The applicant proposes to avail the benefit of Cenvat credit in respect of Service Tax that would be charged by its contractors for installation and commissioning related services on the input side for bringing into existence a pipeline and utilizing the same for discharging its output service tax liability.

4. According to the applicant, the activity of laying of pipeline begins with identification of route of the pipeline from the source to destination. The identification of the route involves a feasibility analysis to ensure that an acceptable route for the pipeline exists that provides the least impact to the environment and public infrastructure already in place. Once the route for the pipeline is identified, the next step is to acquire Right of Use and Right of Way on the said route. In this regard, the applicant would obtain the Right of Use (ROU) in respect of the land along the identified route either under the Gujarat Water & Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 or the Petroleum and Minerals Pipeline (Acquisition of Right of User Inland) Act, 1962. The first one is Gujarat State legislation and the second one is a Central legislation and both are exactly *pari materia*. The requisite rights of way are obtained through privately negotiated contracts.

5. For the purpose of laying pipeline, the applicant would be required to procure steel pipes and valves and further would have to get the pipes and valves installed and commissioned along the identified routes so as to connect the source to the destination. In this regard, the applicant would either grant various turnkey contracts (EPC Contracts) involving supply of pipes as well as installation and commissioning of the said pipes to bring into existence a pipeline connecting the

source to the destination or would procure the pipes themselves and separately obtain the services of construction contractors for installation and commissioning of the said pipes to bring into existence a pipeline. EPC Contractors, under no circumstances, have the complete responsibility of bringing into existence the pipeline. Inter-State pipelines like the one envisaged under the proposed business are massive projects for which the applicant would need to appoint myriad contractors for various scopes of work. Further, apart from the construction related services from the EPC Contractors/other construction contractors, the applicant would also obtain other services like third party inspection and testing, consulting engineering etc which would be required to bring into existence a pipeline.

6. The scope of work of the EPC Contractors would relate to construction of the complete pipelines by carrying out inter alia the following specific work scopes:

- a) Supply of Plant and Equipment (including pipes and valves)
- b) Installation and construction services, and other services
- c) Supply of mandatory spares within and outside India
- d) A civil works package for constructing the stations along the pipeline route

7. Though the EPC Contracts awarded by the applicant to the various EPC Contractors would involve both supply of goods like pipes and rendering of construction / erection, installation and commissioning services, and further the price agreed between the applicant and the EPC Contractor(s) will be a composite price, such composite price will be divided into two key components, viz. price for supply of goods and price for rendering of services. The EPC Contractors would charge separately for the supply of goods like pipes from the applicant and separately for provision of services. Thus the EPC Contract between the applicant and the EPC Contractors would be divisible contract, which can be divided into provision of service and supply of equipment/material i.e. pipes. Separate invoices would be raised by the EPC Contractors for the sale of pipes and provision of

construction / erection, installation and commissioning services for laying of the pipeline. Under the EPC Contracts, the applicant will procure the pipes from the EPC Contractors, under a "Bill to ship to" arrangement whereby, the pipes purchased by EPC contractors from pipe manufacturers would be directly shipped by such manufacturers to the applicant's project site (with applicant as a consignee) under the cover of appropriate statutory documents/invoice. Upon receipt of the pipes at the project site, the applicant would issue the same to the EPC Contractors free of cost for provision of the services of installation and commissioning for putting together the pipes and bringing into existence a pipeline along the identified route.

8. Applicant submits that the service by the EPC Contractors/construction service providers would essentially consist of putting together the individual pipes issued free of cost by the applicant by welding / using nuts and bolts / other means and bringing into existence a pipeline along the identified route. Such pipes, once connected to each other, are referred to as 'pipelines' in trade parlance, as well as in dictionaries. Such pipelines are then placed under the surface of the earth in trenches which are dug for such purpose. Further, in respect of provision of services for erection and commissioning of pipelines, the EPC Contractors would qualify their services as "works contract services" as defined under Section 65B (54) of the Finance Act, post July 1, 2012 and discharge Service Tax accordingly. Further, in the light of the fact that such services by EPC Contractors would be composite supplies involving both goods and services, the EPC Contractors would discharge Service Tax on the basis of one of the options given under Rule 2A of Service Tax (Determination of Value) Rules, 2006.

9. Applicant submits that other construction contractors and other service providers who would be providing pure services would raise service invoices and pay service tax thereon at the applicable rates. The gas transmission pipeline that would be brought into existence through the services rendered by the EPC Contractors / other construction contractors and other service providers, will be utilized by the applicant for providing services of gas transport through pipelines on the output side. Applicant has sought following ruling from the Authority:

“Whether the Applicant is eligible to avail CENVAT Credit of the service tax that would be paid by the EPC Contractor/other construction contractors and other service providers (except for service tax paid vis a vis construction services for the civil works package for building the pipeline substations) against the Applicant’s output service tax liability under the taxable output service in the nature of transport of gas through pipelines.”

10. First point urged by the Revenue is that the question raised by the applicant in present applications, are same as already decided by the Appellate Tribunal in the case of Gujarat State Petronet Ltd. Vs. CCE, Ahmedabad reported in 2013 (32) STR 510 (Tri. Ahmed). Therefore, as per provisions to Section 96 D (2) of the Finance Act, 1994, the Authority shall not allow the application where the question raised in the application is same as in a matter already decided by the Appellate Tribunal or any Court. In the present case, the Hon’ble High Court in Gujarat State Petronet Ltd. Vs. CCE, Ahmedabad reported in 2013 (32) STR 271 (Guj) inter-alia ordered that the Authority for Advance Rulings to decide the questions raised in the petitioners’ applications, under Section 96 C, on merits, under Section 96 D of the Finance Act, 1994. Hon’ble High Court concluded that if AAR pronounces advance ruling on the question raised by the petitioners, even then it will not result in conflicting or incompatible decision as order of AAR would be binding only on the applicants and tax authorities. In view of the above decision of the Hon’ble High Court in the present case, the matter was taken up by this Authority. Therefore, contention of Revenue is not correct.

11. Revenue relied upon the judgment of Tribunal in case of Mundra Port & SEZ Ltd. vs. CCE Rajkot [2008-TIOL-1691-AHM] in support of their contention that services provided in this case are not input services. In case of Mundra Port & SEZ Ltd. Vs. CCE Rajkot, appellant took credit of excise duty paid on cement and steel used for construction of jetty and storage tanks and utilized this credit for providing port service. In that case, Tribunal examined the expression “used for providing a output service” as appearing in Rule 2 (k) (ii) of Cenvat Credit Rules, 2004 under the definition of “input”, as it existed then. It is observed by the Tribunal that said definition has restrictive meaning and cannot be given wide import. Tribunal held that cement and steel used in construction of jetty, cannot be said to provide port service. On the same analogy, Revenue has contended that the services used for erection and commissioning of such

plant, do not take part directly in providing output taxable service of transportation of gas and also same cannot be considered to be integrally connected in providing output service in view of restrictive definition of “input service”. On the other hand, applicant submits that in order to put the pipes to effective use, the pipes are required to be connected, installed and embedded inside the earth so as to constitute a pipeline system, so that they can render service of transport of gas through pipeline; that input service from EPC contractors and others to bring into existence the pipeline will be “used for providing output service” for transport of gas through pipeline. It is observed that the applicant proposes to provide output service of transportation of gas through pipeline, on the basis of input services of construction/ erection, installation and commissioning received from the EPC Contractors/ third party and these services are output services from EPC contractors and others. Therefore, in case of *Mundra Port & SEZ Ltd. Vs CCE Rajkot*, the credit of input (i.e. cement and steel) was taken for providing output service i.e. Port service under Rule 2(k) *ibid*. Further, on the issue before us, provisions of Rule 2(k), which defines “input”, are not applicable, but “input service” defined under Rule 2(l) *ibid*, used by the applicant for providing output service. Applicant *inter-alia* submits that without the pipes and valves or the pipeline system, it is not possible to render the service of transport of gas through pipeline; that said service can-not be provided without using the said input services, which are intrinsically required for the provision of taxable services; that the proposition is also clear, given that the description of taxable services *per se* i.e. “transport of goods through pipeline or other conduit service”, as it was under Section 65 (105) (zzz) of the Finance Act, 1994, prior to 01.07.2012, which indicates that the services are to be rendered via use of pipeline. We agree with the contention of the applicant that pipeline is used for output service of transport of gas through pipeline. It is not possible to think of a situation regarding transport of gas without pipelines except with the help of Tankers, which would be highly uneconomical. It is observed that Revenue has relied upon a number of judgments on this issue, which only indicate that Cenvat credit is not available on inputs used for manufacture of immovable goods and same are not relevant to issue before us. Present issue relates to input service used for providing output service. We also agree with the applicant that *factum* of pipeline system being immovable property is irrelevant in the back-drop of Rule 2 (l) *ibid*.

12. Revenue has also urged an issue regarding exclusion clause A (b) of input service under Rule 2 (I) of Cenvat Credit Rules, 2004, pleading that laying of pipeline would not come under the definition of “input service”, which, inter-alia states as under:

“input service” means any service –

(i) used by provider of output service for providing an output service; or

x x x x x

But excludes –

(A) service portion in the execution of works contract and construction services including service listed under clause (b) of Section 66 E of the Finance Act (hereinafter referred to as specified services) insofar as they are used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

x x x x x

13. Rule 3 (1) of Cenvat Credit Rules, 2004 inter-alia envisages that a provider of output service shall be allowed to take credit of Service Tax leviable under Section 66 B of the Finance Act, 1994, paid on any input service by the provider of output services. There is no doubt that the applicant is provider of output service i.e. transport of gas through pipeline and therefore, eligible to take credit of Service Tax paid on input service i.e. construction/ erection, installation and commissioning by EPC contractors/third party. Further, as per Rule 2 (I) ibid, “input service” inter-alia means any service used by a provider of output service for providing an output service. However, it excludes service portion in the execution of works contract and construction services. It has been correctly pointed out by the applicant that service of laying of pipeline is different from construction of building or a civil structure, as under erstwhile Section 65(25b) of the Finance Act, 1944, “commercial and industrial service” meant (a) construction of a new building or a civil structure or a part thereof; or industrial construction service meant construction of a new building or civil structure or a part thereof or (b) construction of pipeline or conduit; orIt is clear from above that construction of a building or a civil structure are different than construction of laying of pipeline and would not come under the exclusion clause (a) above i.e. construction or execution of works contract of a building or civil structure.

14. The other exclusion clause is for service portion in execution of works contract and construction services insofar as they are used for laying of foundation or making of structure for support of capital goods. It is noticed that this exclusion clause has 2 sub-parts, namely;

- a) Service portion used for laying of foundation for support of capital goods; or
- b) Services portion used for making of structure for support of capital goods.

15. Applicant has given a detailed description of process followed in laying pipelines, which includes site preparation, pipe transportation, pipe stringing, pipe welding, trenching, external coating, lowering in, back filling and land restoration. It is observed that both the above referred services to be excluded from the scope of “input service” are to be used for support of capital goods. There is no doubt that the subject goods i.e. pipes and valves, are capital goods but the input service to be rendered by the applicant is not for support of pipes and valves i.e. “capital goods” but for laying of pipeline for transport of gas. As input service received by the applicant from EPC contractors and others is not for laying of foundation or making of structure for support of capital goods, same does not fall under the exclusion clause, as above.

16. In view of above, we hold that is the applicant is eligible to avail Cenvat Credit of the Service Tax that would be paid by the EPC Contractor/other construction contractors and other service providers (except for Service Tax paid vis a vis construction services for the civil works package for building the pipeline substations) against the applicant’s output service tax liability under the taxable output service in the nature of transport of gas through pipelines.

Sd/-
(S.S.Rana)
Member

Sd/-
(V.S.Sirpurkar)
Chairman

