2013 (1) ECS (63) (Tri-Mum)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

M/s Oil & Natural Gas Corporation Ltd.

Vs.

Commissioner of Central Excise, Raigad

Appeal No. E/1267 to 1273/11

(Arising out of Order-in-Original 01/CSP(01)/COMMR/RGD/11-12 dated 6.5.2011 passed by the Commissioner of Central Excise, Raigad).

M/s Oil & Natural Gas Corporation Ltd. Appellant

Vs.

Commissioner of Central Excise, Raigad Respondent

Appearance:

Shri V. Sridharan, Advocate for Appellant
Shri K.L. Goyal, Commissioner (A.R.) for Respondent

CORAM:

SHRI S.S. KANG, VICE PRESIDENT
SHRI SAHAB SINGH, MEMBER (TECHNICAL)

Date of hearing: 08.11.2012
Date of decision:29.11.2012

ORDER NO. A/1043 TO 1049/12/EB/C-II

"The word 'duty of excise' referred in the definition of Exempted good and Excisable goods refer to duty of excise as specified in Section 3 of the Central Excise

salt Act. Therefore, the contention of the appellants that since cess is paid by htem on the Crude Oil manufactured at Mumbai Offshore, Crude Oil is duty paid and not exempted is not acceptable." [Para 6.4]

"We find that contention of the appellant that Mumbai Offshore is an integral part of Urban Plant as Crude Oil is transferred to Uran Plant for the manufacture of value added product is not acceptable as Crude Oil manufactured at Mumbai Offshore is a saleable commodity and in fact is being sold party at Mumbai Offshore." [Para 6.5]

"We also find that under Rule 7 of the CENVAT Credit Rules the input service distributor may distribute the CENVAT credit in respect of Service Tax paid on input service to its manufacturing units subject to condition that credit of Service Tax attributable to service used in a unit exclusively engaged in the manufacture of exempted goods shall not be available. Since Mumbai Offshore is exclusibely engaged in the manufacture of exempted goods, credit of Service Tax paid on input services can not be distributed." [Para 6.8]

Per Sahab Sing

1. These are seven appeals filed by M/s ONGC Ltd. One appeal is filed by M/s ONGC Ltd. Urban Plant (appellants) and six other appeals by Input Service Distributors of ONGC (hereinafter referred to as ISDs) having the different registration numbers and addresses.

2. The appellants are engaged in the manufacture of excisable goods falling under Chapter 27 of the Central Excise Tariff Act, 1985. Raw materials used for the production of excisable goods are natural gas and crude oil procured from the Oil Field of Mumbai Offshore. The appellants availed the CENVAT Credit of Central Excise duty on the inputs and capital goods directly received by the appellant at Uran Plant and Service Tax paid on input services and distributed by the input Service Distributors in terms of facility extended to the manufacturer of the excisable goods under the provisions of Cenvat Credit Rules. The input service distributors of M/s ONGC Ltd. are mentioned as under:-

   (a) Oil and Natural Gas Corporation Ltd. (Mumbai High Asset)

   (b) Oil and Natural Gas Corporation Ltd. (Regional Office)

   (c) Oil and Natural Gas Corporation Ltd. (Offshore Logistics)

   (d) Oil and Natural Gas Corporation Ltd. (Neelam Heera)

(e) Oil and Natural Gas Corporation Ltd. (Drilling Services)

(f) Oil and Natural Gas Corporation Ltd. (Engineering Services)

3. The appellants also have multi locational units for the manufacture of excisable goods and one such unit of appellants is registered with Central Excise, Mumbai-I Commissionerate. This unit manufactures/produces the exempted excisable goods such as natural gas and crude oil for which M/s ONGC Ltd. held Central Excise registration issued by Mumbai-I Commissionerate. The crude oil and natural gas produced from the Oilfield of Mumbai Offshore were supplied to the refineries situated at different location. Oilfields of Mumbai Offshore of the appellants are discharging the Oil Cess leviable under the Oil Industry (Development) Act, 1974 and also discharging the National Calamity Contingent duty (NCCD), Primary Education Cess and Secondary & Higher Education Cess for the crude oil manufactured/produced by the appellants at Mumbai Offshore. On the basis of intelligence, an inquiry was conducted by the department and the principal allegation made was that the appellants has availed and utilized inadmissible CENVAT Credit of Service Tax distributed by the various above mentioned inputs service distributors situated in Mumbai. It was alleged that such CENVAT Credit of Service Tax in fact related to various input services availed and used exclusively at the Oilfield of Mumbai Offshore and not in Uran unit. It was alleged that the crude oil falling under Chapter Heading 2709.0000 and natural gas falling under sub-heading 2711.2100 used by the appellants from the Oilfield of Mumbai Offshore were though excisable goods under Section 2 (d) of the Central Excise Act, 1994, but the tariff rate of the crude oil was Nil and for the natural gas the rate of 16% was exempted vide Sr. No. 30 of the Notification No. 4/2006 dated 1.3.2006. It is the contention of the department that since both these products were exempted as far as the duty of excise is concerned, the CENVAT Credit availed and utilized by the appellants was not admissible to them.

3.1 As per Notification No. 27/05-Service Tax dated 7.6.2005, the input service distributor has to obtain the registration within a period of 30 days of commencement of business or 16th day of June, 2005, whichever is later. The input service distributors of the appellants have obtained registration in the first quarter of 2009, hence the credit availed of the tax paid on service by the input service distributors for period prior to the date of registration as input service distributors for period prior to the date of registration as input service distributor is not admissible under Rule 3 (i) of the Cenvat Credit Rules because both the Rules 3 (2) and 3 (3) of the Cenvat Credit Rules are applicable to only inputs lying in stock and not to the input services already availed and since the input service distributors have not followed the such statutory provisions, they are not entitled for CENVAT Credit of Rs. 27,79,30,282/- which is recoverable from them under Rule 14 of the Cenvat Credit Rules.

3.2 On the basis of investigation, a show- cause notice dated 8.4.2010 was issued to the appellants as well as six input service distributors demanding the CENVAT Credit of Service Tax amounting to Rs. 40,57,15,829/- under Rule 14 of the Cenvat Credit Rules

read with Section 11 A of the Central Excise Act also demanding the interest as applicable under Rule 14 of the Cenvat Credit Rules, 2004 and it was also proposed to impose penalties under Section 11 AC of the Central Excise Act read with provisions contained under Rule 15 of the Cenvat Credit Rules. These show-cause notices were contested by the appellants and input service distributors and the case was adjudicated by the Commissioner vide impugned order disallowing the CENVAT Credit of Service Tax amounting to Rs. 40,57,15,829/- under Rule 14 of the Cenvat Credit Rules read with Sectio 11A of the Central Excise Act and also imposing the equal amount of penalties on the appellants under Section 11 AC of the Central Excise Act read with Rule 15 of the Cenvat Credit Rules and the interest was also demanded under Section 11 AB of the Central Excise Act read with Rule 14 of the Cenvat Credit Rules. Various amounts of penalties were also imposed on all the six input service distributors. The appellants and the six input service distributors have filed these appeals in this Tribunal.

4. Learned Sr. Advocate appearing for the appellants submitted that raw crude oil obtained at process platform at Mumbai Offshore is not excisable commodity as such crude oil is in semi stabilized/ un-stabilized form and such a Crude Oil can not be marked in semi stabilized/ un-stabilized state. Semi stabilized Crude Oil is sent either through pipeline to Urban Plant or through oil tankers for completion of final stage of stabilisation and only thereafter it becomes marketable and excisable. Therefore, he submitted that semi stabilized Crude Oil is not excisable goods under Section 15 (1) of Oil (Industry Development) Act 1974 and Section 3 of the Central Excise Act, 1994 as only stabilized crude oil is excisable commodity.

4.1 Learned Sr. Advocate submitted that Crude Oil is a dutiable product and therefore credit of Service Tax paid on services used in the manufacture of Crude Oil is admissible to them. He submitted that various duties have been specified in Rule 3 (1) of the CENVAT Credit Rules, 2004 in respect of which credit is admissible and Rule 6 (1) of Cenvat Credit Rules denies credit in respect of Service Tax paid on input services if used in the exempted goods. Since the appellants are paying Cess, NCCD, Education Cess or SHE the Crude Oil can not be treated as exempted goods under Rule 6 of the CENVAT Credit Rules and therefore credit of Service Tax paid on input services is admissible to them.

4.2 Learned Sr. Advocate further argued that Crude Oil and Natural gas are intermediate product as Mumbai Offshore is part of Urban Plant and therefore Rule 6 (1) will not apply in this case. He stated that Crude Oil and Natural gas are necessary inputs for the final products manufactured at Urban Plant. Without Crude Oil and Natural gas Uran Plant can not function. He submitted that Mumbai Offshore is a captive mine and since all the Crude Oil and Natural gas produced at Mumbai Offshore (excepted minimal quantity of 6% from process platform which are sold to other refineries) is transferred to Uran Plant, process platform is a part of Uran Plant and Crude Oil/ Natural gas it an intermediate product. Therefore, credit of Service Tax paid on input services used in process platform is admissible for the manufacture of final products at Uran Plant.

4.3 He pointed out that show-cause notice alleges that since Urban plant and Mumbai Offshore units are having different registration, credit is not admissible to them. He submitted that under CENVAT Credit Rules there is no restriction about use of input services outside the factory. Restriction is only in respect of inputs which are to be used in the factory.

4.4 He submitted that Commissioner denied the Service Tax credit in respect of service availed prior to registration as input service distributor. In this case ISD registration was done in early 2009 and only after the registration CENVAT credit of Service Tax was availed by them. He submitted that there is no restriction in CENVAT Credit Rules, 2004 denying credit in respect of service used prior to date of registration. Since the credit was availed only after date of registration the finding of Commissioner denying CENVAT credit is unsustainable.

4.5 Learned Sr. Advocate submitted that since credit was rightly availed by Uran Plant, there is no case of changing of interest and imposition of penalty. Appellants had no intention to wrongly avail and utilize the credit of input services therefore no penalty is impossible on Uran Plant. He pointed out that under Rule 15 (1) and 15 (2) prevailing during relevant time penalty can be imposed for wrong availment of credit of duty paid on input or capital goods and the Rule 15 (1) and 15 (2) do not apply to input services. similarly Rule 15 (4) is applicable to out put service provider and maximum penalty imposable under Rule 15 (3) on manufacturers for wrong availment of credit in respect of input services is Rs.2000/-. Similarly no penalty is imposable on ISDs as show- cause notice has invoked Rule 25/26 of Central Excise Rule which are not applicable to input service and Commissioner has imposed the penalty under Rule 15 (4) of Cenvat Credit Rules which does not apply to ISDs.

4.6 Learned Sr. Advocate mainly relied on the following decisions in support of above submissions:-

(i) Vikram Cement Vs. CCE, Indore – 2006 (194) ELT 3 (SC)

(ii) Chowgule & Co. Pvt. Ltd. Vs. UOI – 1993 (67) ELT 34 (SC)

(iii) Brooke Bond India Ltd. Vs. Collector of Central Excise – 1991 (55) ELT 342

(iv) Lupin Laboratories Ltd. Vs. Collector of Central Excise – 1994 (71) ELT 914

5. Learned Commissioner (A.R.) appearing for the Revenue submitted that the products manufactured at Mumbai Offshore are crude oil and natural gas and these are exempted from the duty. Therefore, the CENVAT Credit of Service Tax distributed by the ISD to their Uran Plant on such services rendered in relation to the manufacture of the exempted goods manufactured in Mumbai Offshore is not admissible. He further submitted that under Rule 6 (1) of the CENVAT Credit Rules, CENVAT Credit is not admissible on

such quantity of input services which is used under the provisions of exempted services/exempted goods except in the circumstances specified in sub – rule 2. Therefore, the credit availed by M/s ONGC on input services used by them cannot be passed on the Uran Plant as these services were used in the exempted crude oil / natural gas and there is no nexus between the services and the manufacturing activity carried out at Uran Plant. He further contended that under Rule 7 of the Cenvat Credit Rules, the input service distributors can distribute the Service Tax credit in respect of the Service Tax paid on the input services to its manufacturing unit subject to the condition that the credit of Service Tax attributed to services used in unit exclusively engaged in the manufacturing of exempted goods shall not be distributed. Since in the present case, the goods manufactured at Mumbai Offshore are exempted from the Excise duty, the Service Tax paid on the services used in the manufacture of these goods cannot be distributed by the ISD. He further pointed out that the part of crude oil is cleared by M/s ONGC to independent buyers and such buyers cannot avail any credit of CENVAT Credit on procurement of crude oil because the crude oil is an exempted product. If the CENVAT Credit on these input services is allowed to Uran Plant, this will lead to discrimination vis-à-vis the independent buyers. Thus, any interpretation allowing of CENVAT Credit to the Uran Plant and not to independent buyers is not permissible on principle of equity. He submitted that the Commissioner has passed a legal order denying the credit of Service Tax paid on the input services and therefore, appeal is liable to be dismissed.

6. After hearing both sides, we find that issue involved in these appeals is denial of CENVAT credit of Service Tax paid by various ISDs on input services used in or in relation to manufacture of Crude Oil/Natural gas to the appellant at their Uran unit as Crude Oil / Natural gas is exempted and also whether credit of Service Tax paid prior to date of registration as ISDs is deniable to the appellants

6.1 It will be appropriate to know about the process of production of Crude Oil in brief is as under:-

a. The mixture of liquid & gaseous hydrocarbons rising through well Heads is taken to Process Platforms where these are cooled and decompressed in two stages to bring down the pressure progressively.

b. The mixture of liquid & gaseous hydrocarbons received from well Heads is highly effervescent due to rapidly escaping lighter hydrocarbons dissolved in / associated with the heavier hydrocarbons (which are in liquid form), on being brought to lower pressures at the surface. It is in an unstable state and is also hazardous due to highly inflammable gases escaping from it with great force. At this stage and in this form, it cannot be transported through pipelines or in any other manner.

c. Gradual decompression ensures that the escaping gas do not carry with it liquid hydrocarbons which have higher market value.

d. During the separation process, a substantial quantity is dissolved / associated gases is separated from the liquid hydrocarbons. These are collected and de-moisturized for making them fit for transportation through pipelines. If the gases contain moisture, they would corrode the pipelines.

e. Apart from the dissolved / associated gases water contained in material extracted from the wells also is separated to a great extend. The resulting fluid largely comprises heavier hydrocarbons (Cs onwards). However, being at the pressure of 3 K.G. per sq cm. At the point of leaving the last Separator (Separator No. II), it still contains substantial quantities of associated/dissolved light hydrocarbons (C1 to C4). It may be described as semi-stabilized as it is stable enough to be transported to the Urban Plant through pipelines.

1.2 Appellants contend that what they produce at Mumbai Offshore is semi stabilized / un-stabilized state and had to be stabilized before its actual sale or use in the manufacture of value added product. We find that this submission of the appellants is not in conformity with the facts of the case inasmuch as the firstly Crude Oil manufactured at the Mumbai Offshore is being transported t Uran units through pipelines. Secondly Crude Oil produced at Mumbai Offshore is a saleable commodity and is being sold by M/s ONGC to its buyers. Thirdly before Uran Plant came into existence, entire Crude Oil manufactured at Mumbai Offshore was sold by M/s ONGC. We also find that Crude Oil is defined under the Oil Industry (Development) Act, 1974 as under:-

> "Crude Oil means petroleum in its natural state before it is refined or otherwise treated but for which water and foreign substances have been extracted."

We also note that M/s ONGC are paying cess on the Crude Oil produced at Mumbai Offshore. Therefore, we are of the view that Crude Oil used in Uran Plants and other units to manufacture other value added final product can not be termed as semi stabilized / semi finished goods.

1.3 This is one of the contentions of the appellants that Crude Oil manufactured by them at Mumbai Offshore is not exempted product as they are paying Cess leviable under Oil Industry (Development) Act, 1974. We find that the term 'exempted goods' is defined under Rule 2 (d) of CENVAT Credit Rules, 2004 according in which "exempted goods" means **'excisable goods'** which are exempt from the whole of duty of excise leviable theron, and includes goods which are chargeable to "NIL" rate of duty. "Excisable goods" have been defined under Section 2 (d) of the Central Excise Act, 1994 according to which "Excisable goods" are goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff, 1985 (5 of 1986)as being subject to a duty of excise and includes salt. The duty of excise mentioned herein above as per section 3 of the Central Excise Act, 1994 is (a) CENVAT (Central Value Added Tax) & (b) Special Duty or Excise (SED) in addition to CENVAT mentioned in (a).

1.4 The word 'duty of excise' referred in the definition of Exempted good and Excisable goods refer to duty of excise as specified in Section 3 of the Central Excise salt Act. Therefore, the contention of the appellants that since cess is paid by htem on the Crude Oil manufactured at Mumbai Offshore, Crude Oil is duty paid and not exempted is not acceptable.

1.5 Now we come to the argument of the appellants that Mumbai Offshore is an integral part of Uran Plant and Crude Oil/ Natural gas being intermediate products, they are entitled to CENVAT credit of Service Tax paid on input services even if intermediate product is exempted. We find that contention of the appellant that Mumbai Offshore is an integral part of Urban Plant as Crude Oil is transferred to Uran Plant for the manufacture of value added product is not acceptable as Crude Oil manufactured at Mumbai Offshore is a saleable commodity and in fact is being sold party at Mumbai Offshore.

1.6 We find that Rule 3 (1) of CENVAT credit Rules reads as under:-

> 3 (1) A manufacturer or producer of final product or a provider of taxable service shall be allowed to take credit (hereinafter referred to CENVAT credit) of duty paid on –
> ……
> ……
> ……
>
> (i) any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service on or after 10th day of September, 2004 and
>
> (ii) any input service received by the manufacturer of final product or by provider of output service on or after 10th September, 2004.
>
> including the said duties or tax or cess paid on any input or input services as the case may be use in the manufacture of intermediate products by a job worker availing benefit of exemption specified in the notification of Govt. of India, Ministry of Finance (Deptt. of Revenue) No. 214/86-CE dated 25.03.1986 published in Gazette of India vide no. GSR 547 (E) dated 25.03.1986 and received on or after 10th September, 2004. Under Notification No. 214/86 goods manufactured by the job worker are exempted. Under Rule 3 (1) credit of Service Tax paid on input services used in manufacture of final product. Since Mumbai Offshore unit is not a job worker under Notification No. 214/86, ONGC Uran unit is not entitled to CENVAT credit of service Tax paid on input services used in Crude Oil manufactured by Mumbai Offshore.

1.7 We also note that under Rule 6 (1) of the CENVAT Credit Rule CENVAT credit shall, not be allowed on much quantity of input services which is used in the exempted goods

except in the circumstances specified in Rule 6 (2) if a manufacturer manufactures both exempted goods and dutiable goods and he maintains separate records of input services gone into dutiable goods / exempted goods, the credit in respect of input services gone into dutiable goods will be admissible. In the present case input services are entirely being used in Crude Oil/ Natural gas which are exempted from duty. Therefore, in this case credit is not admissible.

1.8 We also find that under Rule 7 of the CENVAT Credit Rules the input service distributor may distribute the CENVAT credit in respect of Service Tax paid on input service to its manufacturing units subject to condition that credit of Service Tax attributable to service used in a unit exclusively engaged in the manufacture of exempted goods shall not be available. Since Mumbai Offshore is exclusibely engaged in the manufacture of exempted goods, credit of Service Tax paid on input services can not be distributed.

1.9 The Sr. Advocate heavily relied on the decision of the Hon'ble Supreme Court in Vikram Cement – 2006 (194) ELT 3 (SC). The question before the Hon'ble Apex Court in this case was whether Jaypee Rewa Cement Vs. CCE – 2001 (133) ELT 3 (SC) would apply to CENVAT Credit Rules 2000 as a Bench of two judges of Supreme Court in case of CCE Jaipur Vs. J.K. Udaipur Udog Ltd. – 2004 (171) ELT 289 (SC) held that Jaypee Rewa did not apply to Cenvat Credit Rules. The Court in the case of Vikram Cement held that Jaypee Rewa would continue to apply. Para 7, 8, and 11 of the Judgment are reproduced below:-

> "7. Then comes Rule 57 J which, in so fare as it is material, reads:-
>
> **Rule 57 J. Credit of duty in respect of inputs used in an intermediate product**. – (1) Notwithstanding anything contained in these rules, the manufacturer shall be allowed to take credit of the specified duty paid on inputs described in column (2) of the Table below and used in the manufacture of intermediate products described in column (3) of the said Table received by the said manufacturer for use in or in relation to the manufacture of final products described in the corresponding entry in column (4) of the said Table."
>
> The manufacture of final "products shall taken credit under sub-rule (1) only if the intermediate products are manufactured in a factory as a job work in respect of which the exemption contained in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 214/86 Central Excises, dated the 25th
>
> xxx xxx xxx xxx (3)
>
> [Emphasis supplied]

8. This Rule allows credit on inputs used in manufacture of intermediate products described in Column 3 of the Table provide the intermediate products are received by the manufacturer for use in or in relation to the manufacture of final products described in the corresponding entry in Column 4 of the Table Explosives, limestone and cement are admittedly covered by Colunms 1, 2 and 3 respectively of the Table.

11. The question whether it was necessary for inputs to be used within the factory premises where the manufacture as defined in Rule 57 AB of final products takes place for the purposes of availing of credit, came up before a Bench of three Judges in the case of Jaypee Rewa Cement V. CCE (supra). As in this case, in that case the input in question was explosive which were used in quarrying limestone used in the manufacture of cement. The Court came to the conclusion on a consideration of the Rules which we have already quoted, that sub rule (1) of the Rule 57 A did not in any way specify that the inputs have to be utilized within the factory premises. The Tribunal had relied upon Rule 57 F in coming to the conclusion that the inputs in respect of which credit of duty was claimed must be those which were used in or brought in the factory premises. In reversing the decision of the Tribunal this Court observed that:-

> "The Tribunal, however, has not referred to the provisions of Rule 57 J, the opening portion of which makes it clear that the said Rule will be applicable notwithstanding anything contained in the other Rules. According to Rule 57 J, when the Central Government by notification specified the input used in the manufacture of intermediate products received by the manufacturer for use in or in relation to the manufacture of final product, then all such products on which duty has been paid credit will be allowed…….
>
> Explosives would fall under column (2) being a tariff item in Chapter 36; the intermediate product, namely, lime stone would fall under column 3 being covered by Chapter 25; and the final product, namely, cement would also fall under Chapter 25 and would fall under column 4. The reading of Rule 57 J along with the aforesaid notification can leave no manner of doubt that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of the final product. The manufacturer would be allowed credit on the duty paid in respect of the input. On the explosives a duty had been paid and the appellants would be entitled to claim credit because the explosives were used for the manufacture of the intermediate product, namely lime stone which, in turn, was used for the manufacture of cement".

1.10 In the case of Vikram Cement (supra) explosive, limestone and cement were figuring in the table of Rule 57 J as input, intermediate product and final product. In the instant case before us, there is neither such table of input services, intermediate products and final product nor Mumbai Offshore is a job worker under Notification No. 214/86. Therefore, decision of Vikram Cements (supra) is distinguishable from facts of present case.

1.11 Sr. Advocate also relied on the decision of Apex Court in the case of Chowgule & Co. – 1993 (67) ELT 34 (SC). In this case court was examining provisions of Section 8 (3) (b) and 13 of Central Sales Tax Act, 1956. Sales Tax is leviable on point of sale and ore is sold after processing. In this case court held that machinery, vehicles and barges used for carrying the ore from mining site to place of processing are to be considered as goods for use in processing of ore for sale. Facts of this case are distinguishable from the present case as Crude Oil / Natural gas manufactured at Mumbai Offshore are excisable goods at the process platform itself.

1.12 Appellant also relied on the decision of Tribunal in case of Brooke Bond India Ltd. – 1991 (55) ELT 342 in which Tribunal allowed the credit of duty paid on paper bag used for manufacture of printed paper bags which is turn used in packing tea. Ratio of this decision is also not applicable to the present case as printed paper bags and packing tea were used in the same factory whereas Crude Oil and value added product are manufactured at Mumbai Offshore and Uran Plant.

1.13 Similarly, ratio of Tribunal's decision in case of Lupin Laboratories Ltd. – 1994 (71) ELT 914 is also not applicable as goods in this case in entirely were being sent from Ankleshwar unit to Mandideep Unit and Unit at Ankleshwar was a job worker under exemption Notification No. 214/86. In the present case Crude Oil is party sold by Mumbai Offshore unit to independent buyers and Crude Oil is not sent in entirely to Uran Plant and also Mumbai Offshore is not job worker as per Notification No. 214/86.

7. In view of the above, we hold that credit of service tax paid on input services used in manufacture of Crude Oil and Natural gas at Mumbai Offshore is not admissible to Uran Plant. Since credit is not admissible we do not go into second aspect of admissibility of credit only after date of registered as ISD. We therefore, uphold Commissioner's Order regarding confirmation of demand of Rs.40,57,15,129/- under Rule 14 of the CENVAT Credit Rule, 2004 read with Section 11 A of the Central Excise Act. Since confirmation of demand is upheld, interest on the demand amount is also recoverable under Rule 14 of Cenvat Credit Rules read with Sec 11 AB of Central Excise Act.

7.2 Coming to issue of imposition of penalty on Uran Plant, it is the contention fo the appellants that demand pertains to period upto November, 2009 and in that period Rule 15 (1) and Rule 15 (2) of the CENVAT Credit Rule, 2004 did not cover wrong availment of input service credit. We find that Rule 15 has been amended with effect from 27.02.2010 incorporating input service at Rule 15 (1) and 15 (2) of CENVAT Credit Rule 2004. Therefore, penalty under Rule 15 (1) and 15 (2) is not imposable. Similarly, under

Rule 15 (4) penalty is imposable on output service provider. Therefore, penalty is imposable only under Rule 15 (3) of Cenvat Credit Rule and maximum penalty under Rule 15 (3) is Rs. 2000/- only. We therefore, find considerable force in the submissions of the appellants and reduce the penalty imposed under Rule 15 of the CENVAT Credit Rules to Rs.2000/- on the appellants.

7.3 As regards imposition of penalty on ISDs, we find that in show-cause notice penalty was proposed under Rule 25/26 of Central Excise Rule but in the Order-in-Original penalty is imposed under Rule 15 of CENVAT Credit Rules. Penalty needs to be set aside on this ground alone. Penalty has been imposed under Rule 15 (4) as it existed during the relevant period pertains to imposition of penalty or output service provider. Accordingly, penalties imposed on ISDs are set aside.

8. In view of the above, appeal filed by ONGC Uran Plant is partly allowed. Appeals filed by ISDs are allowed.

(Pronounced in Court on 29.11.2012)