

<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-45/OA/2013-14

DIN: 20240264WT000000C0B2

आदेश की तारीख/Date of Order :- 09.02.2024

जारी करने की तारीख/Date of Issue :- 09.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 77 to 79/ADC/LD/2023-24**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु .5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00. .

**विषय:-** कारण बताओ सूचना / Proceedings initiated against Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4-29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4-27/O&A/2016-17 dated 13.10.2017 issued to M/s. Deep Industries Limited, 12A & 14, Abishree Corporate Park, Ambli Bopal Road, Ambli, Ahmedabad - 380058.



**BRIEF FACTS OF THE CASE:**

M/s. Deep Industries Limited, 12A & 14, Abhishree Corporate Park, Ambli Bopal Road, Ambli, Ahmedabad 380058 (earlier at 6<sup>th</sup> Floor, Astron Tower, Opp. Fun Republic Cinema, S. G. Highway, Ahmedabad-380015) (hereinafter referred to as "the said service provider or the said assessee") was engaged in the business of providing the service viz. Mining Service, Transport of Goods by road, Business Auxiliary Services etc. as defined under Chapter V of the Finance Act, 1994. The company is registered with the Service Tax Department holding STC No. AAACD6915EST001.

2. During the course of audit by the Internal Audit Party of Service Tax Commissionerate of M/s Deep Industries Ltd., it was noticed that they were providing services in relation to compression of Natural Gas at the premises of M/s Gujarat Alkalies and Chemicals Ltd (hereinafter referred to as GACL). The activity of compression of Natural Gas was covered under the category of Business Auxiliary Service. After 1.7.2012, there is no service specific classification and if the activity amounts to 'service' under Section 65B(44) of the Finance Act, 1994 and the service does not fall in the negative list or not covered under any exemption, service tax is attracted. The assessee was availing exemption from payment of Service Tax vide Notification No. 8/2005-ST dated 1.3.2005. Now from Oct 2014, the said assessee has amended his registration by including Business Auxiliary Service in the registration. But the assessee had claimed benefit of exemption Notification No. 25/2012-ST with regard to payment of service tax.

3. It was further observed that M/s GACL awarded the Contract for the Work of compression of natural gas vide its LOI dated 8.5.2003 to M/s Deep Industries Ltd. On perusal of the contract and Board's letter F.No. B.1/3/2001-TRU dated 21.5.2001, it was observed that the activity of conversion of natural gas into Compressed Natural Gas whose pressure is around 200-250 Kg/Cm<sup>2</sup> amount to manufacture and therefore liable to Central Excise Duty. Natural gas coming out of Oil Wells which is compressed at the compressor stations only to boost up the flow of gas in pipeline is subjected to compression of a lower pressure for the movement of Natural Gas through the pipeline and remains Natural Gas and is not chargeable to excise duty at this stage. Thus the activity of compression of Natural Gas by M/s Deep Industries Ltd. was not excisable as the gas was compressed to the extent of 20.0 to 22.0 Kg/Cm<sup>2</sup>.

4 Further vide their letter dated 22.3.2012, the said assessee submitted that they are eligible for exemption granted through Notification 8/2005-ST dated 1.3.2005 for the job work done for M/s Gujarat Alkalies & Chemicals Ltd. (GACL) They further submitted that they are performing job work on the gas supplied by M/s GACL and M/s GACL further use this gas for production of the goods which are cleared by GACL on payment of Excise duty. Mere use of gas for generation of electricity which is finally used for production of goods which are cleared on payment of duty does not change the fact that the gas is used for production of final product by GACL. As per Rule 2(k) of Cenvat Credit Rules, 2004, clause (iii) specifically includes "all goods used for generation of electricity or steam for captive consumption" in the definition of "input". Hence, even if no Excise duty is payable on electricity itself, materials used for

production of electricity, are input for the final product. It is well settled principle that the exemption available to job work should be allowed for the job work done on the goods which are captively consumed by the manufacturer of final product.

5. However, department had observed that said assessee were providing services in relation to compression of natural gas at the premises of M/s Gujarat Alkalies & Chemicals Ltd and activity of compression of natural gas was covered under the category of Business Auxiliary Services and the assessee had not paid service tax by claiming the exemption vide notification 08/2005-ST dated 01.03.2005. Exemption from payment of service tax on the taxable services of production of goods on behalf of the client as per Notification No. 08/2005-ST dated 01.03.2005 was available only in case where the finished goods were produced using raw material or semi finished goods supplied by the client and the goods so produced are returned back to the said client for use in or in relation to manufacture of any others goods falling under the first schedule to the Central Excise Tariff Act 1985 on which appropriate duty of excise is payable and appropriate duty of excise shall not include Nil rate of duty or duty of excise wholly exempt. The compressed natural gas at a uniform pressure of 20kg/cm<sup>2</sup> used for generation of electricity was an exempt product and the electrical energy/electricity falling under S.H. 27160000 of Central Excise Tariff Act 1985 is exempt vide tariff entry itself. Thus above said condition of Notification No. 08/2005-ST dated 01.03.2005 was not fulfilled by the said assessee and hence benefit of the said notification was not available to them.

6. Therefore, following show cause cum demand notices were issued to the said assessee, as detailed below:-

**Table-1**

Sr.No.	Show Cause Notice File No.	Date	Issued by	Period	Amt. of Service Tax (Rs.)
1	F.No.STC/4-2/ O&A/12-13	20.04.2012	Commissioner of Service Tax, Ahmedabad	2006-07 to 2010-11	68,38,825/-
2	F.No..STC/4-21/ O&A/12-13	10.12.2012	Additional Commissioner of Service Tax, Ahmedabad	01.04.2011 to 31.03.2012	27,97,423/-

7. The SCNs at Sr. No. 1 and 2 above were decided by the Commissioner, Service Tax, Ahmedabad vide OIOs No. STC/25/COMMR/AHD/2013 dated 4.7.2013 and No. STC/29/COMMR/AHD/2013 dated 14.8.2013 respectively wherein service tax demands was dropped by holding that the activity of compression of gas undertaken by the said assessee is a process incidental or ancillary to the completion of a manufactured product which gets covered under the definition of manufacture as per Section 2(f) of the Central Excise Act 1944 and therefore the activity undertaken by the said assessee gets excluded from the purview of Business Auxllary Service and hence there was no applicability of Notification No. 08/2005-ST dated 01.03.200. However, department had filed appeals against the above said OIOs before CESTAT, Ahmedabad vide Departmental Appeal No.- ST/13655/2013 and ST/13992/2013 on ground that activity of compression of natural gas was

covered under the category of Business Auxiliary Service and the same is liable for to Service Tax.

8. Further, the said assessee continued the above practice of non-payment of Service Tax on the Service of Compression of Natural Gas as detailed in earlier Show Cause Notices. Therefore, information regarding service tax payable and service tax paid in respect of the same for the subsequent period was called for from the said assessee and same was provided by the said assesses. On the basis of details provided by the said assessee following Periodical Show Cause Notices were issued to the M/s. Deep Industries Limited, 12A & 14, Abhishree Corporate Park, Ambli Bopal Road, Ambli, Ahmedabad 380058 wherein service tax duty under Section 73(1) of Finance Act 1994, interest under Section 75 and penalty under Section 76 of Finance Act 1994 was proposed:-

Table-2

Sr.No.	Show Cause Notice File No.	Date	Period	Taxable Value	Amt. of Service Tax (Rs.)
1	STC/4-45/O&A/13-14	17.04.2014	2012-13 & 2013-14 (up to Sept.2013)	4,03,80,464/-	49,91,026/-
2	STC/4-29/O&A/2015-16	04.09.2015	2013-14 to 2014-15 (up to Sep'2014)	4,20,49,955/-	51,97,374/-
3	STC/4-27/O&A/2016-17	13.10.2017	01.10.2014 to 31.10.2016	5,05,34,192/-	67,65,109/-

9. Departmental Appeal No.- ST/13992/2013 filed against OIO STC/29/COMMR/AHD/2013 dated 14.8.2013 was dismissed as withdrawn by CESTAT, Ahmedabad based on monetary ground vide Final Order No. A/12052/2019 dated 28.10.2019. Further, as Departmental Appeal No.- ST/13655/2013 filed against OIO No.- STC/25/COMMR/AHD/2013 dated 4.7.2013 were pending before CESTAT Ahmedabad, Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4-29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4-27/O&A/2016-17 dated 13.10.2017 were transferred in Call Book on 29.09.2021 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority.

10. Further, Departmental Appeal No.- ST/13655/2013 was disposed off by CESTAT Ahmedabad vide Final Order No.- A/11915/2023 dated 11.09.2023. Subsequently, Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4-29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4-27/O&A/2016-17 dated 13.10.2017 were retrieved from call book for adjudication purpose on 20.12.2023.

**PERSONNEL HEARING & DEFENCE REPLY :**

11. The personnel hearing was granted to the said assessee on 30.01.2024. Shri Keyur Kamdar, CA and authorised person of the M/s. Deep Industries Limited appeared for personnel hearing on 30.01.2021 and submitted copy of Final Order No.- A/11915/2023 dated 11.09.2023 passed by the CESTAT Ahmedabad. Further, he requested time till 31.01.2024 for submission of written submission. He further requested to decide the matter on merits. M/s. Deep Industries Limited vide letter dated 30.01.2024(received on 31.01.2024) has submitted that Show Cause Notices No. (i) STC/4-45/ O&A/13-14 dated 17.04.2014, (ii) STC/4-29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4-27/O&A/2016-17 dated 13.10.2017 are periodical SCNs for main SCN dated 20.04.2012. Main SCN was adjudicated and matter was pending before CESTAT. Recently on 11.09.2023 CESTAT Ahmedabad pronounced the judgement vide Final Order A/11915/2023 dated 11.09.2023 in favour of the respondent by upholding the view taken by commissioner and dismissed the Revenue's Appeal. Further, they submitted that Hon'ble CESTAT has upheld that view of the Adjudicating Authority that process undertaken amounts to manufacture and hence demand of service tax does not survive at all and hence departmental's appeal is dismissed through above order. As all three SCNs currently under adjudication are nothing but periodical SCNs arises out of the main SCN which are already decided by the CESTAT in favour of assessee, therefore, they requested to drop proceeding of the three SCNs following the same ratio.

**DISCUSSION AND FINDINGS:-**

12. The proceedings under the provisions of the Finance Act, 1994 framed there under are saved by Section 174 of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

13. In the instant case, I have carefully gone through the Show Cause Notices, reply to SCNs, facts of the case on record and other submissions made by the said assessee and find that following Periodical Show Cause Notices were issued to the M/s. Deep Industries Limited on ground that the activity of compression of natural gas was covered under the category of Business Auxiliary Service and the same is liable to service tax. Further, in said SCNs service tax demand under Section 73(1) of Finance Act 1994, interest under Section 75 and penalty under Section 76 of Finance Act 1994 was proposed:-

**Table-3**

Sr.No.	Show Cause Notice File No.	Date	Period	Taxable Value	Amt. of Service Tax (Rs.)
1	STC/4-45/O&A/13-14	17.04.2014	2012-13 & 2013-14 (up to Sept.2013)	4,03,80,464/-	49,91,026/-
2	STC/4-29/O&A/2015-16	04.09.2015	2013-14 to 2014-15 (up to Sep'2014)	4,20,49,955/-	51,97,374/-
3	STC/4-27/O&A/2016-17	13.10.2017	01.10.2014 to 31.10.2016	5,05,34,192/-	67,65,109/-

14. Further, I find that main Show Cause Notice F.No.STC/4-2/ O&A/12-13 dated 20.04.2012 was decided vide OIOs No. STC/25/COMMR/AHD/2013 dated 4.7.2013 wherein proceedings initiated against the said assessee vide SCN dated 20.04.2012 was dropped by the then Commissioner, Service Tax Ahmedabad. However, department had filed an appeal No. ST/13655/2013 against the above said OIO before CESTAT Ahmedabad on following grounds:-

- (i) The clarification given by Board vide letter No. B.1/3/2001-TRU dated 21.5.2001 brings out the fact that duty liability would arise only if the natural gas is converted into compressed natural gas. It has also been made clear in the letter that the pressure of the gas required for compression so as to convert it to compressed natural gas for sale is around 200-250 Kg cm<sup>2</sup>. In the case of the said assessee, the initial pressure is ranging from 1.5 Kgs/Cm<sup>2</sup> to 40 Kgs/cm<sup>2</sup> and natural gas is processed to a uniform pressure of 20 Kg/cm<sup>2</sup> for feeding the same to the Gas turbines. In short, the process undertaken by the said assessee on natural gas does not convert the same into compressed natural gas and thus, would not amount to manufacture.
- (ii) As per Chapter Note 10 (renumbered as Chapter Note 5) to Chapter 27 of the Central Excise Tariff Act, 1985 to constitute a process of compressing natural gas amounting to 'manufacture'. It should be such that natural gas gets converted into 'compressed natural gas' which is not the case of the said assessee. The process undertaken by the said assessee has not converted the natural gas into compressed natural gas and therefore, would not amount to manufacture.
- (iii) The unambiguous conclusion based on the Board's clarification letter and the Chapter Note indicate that the pressure of the natural gas emerging after compression should be around 200-250 Kg cm<sup>2</sup> i.e. it should be CNG and then only the process of compression can be construed as 'manufacture'.
- (iv) As held, in a catena of judgments including those of the Hon'ble Apex Court to construe a process as manufacture, the process undertaken should result in emergence of commodity having distinct name, character and use. In the case of the said assessee, no new product emerges as a result of the process of compressing the natural gas marginally, will not amount to manufacture.
- (v) The said assessee simply modifies the pressure of natural gas received by them and that cannot be termed as manufacturing process. What is supplied to the said assessee by GACL is natural gas at varied pressures and what they return to GACL is also natural gas, albeit at a uniform pressure. The process undertaken by the said assessee does not emerge into any new commodity having different name, character and use. The process of bringing about the natural gas to a uniform pressure is only to facilitate its proper flow in the pipeline for feeding the same to gas turbines for generation of electricity.

(vi) As the process does not amount to manufacture, it would fall under the purview of the term 'Business Auxiliary Service' as defined under the provisions of Section 65(19) of the Finance Act, 1994.

**15.** I find that on the basis of pendency of Departmental Appeal No.- ST/13655/2013 before CESTAT Ahmedabad, Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4- 29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4- 27/O&A/2016-17 dated 13.10.2017 were transferred in Call Book on 29.09.2021 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority. Further, I find that Departmental Appeal No.- ST/13655/2013 has been dismissed by CESTAT Ahmedabad vide Final Order No.- A/11915/2023 dated 11.09.2023. Accordingly, Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4-29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4- 27/O&A/2016-17 dated 13.10.2017 were retrieved from call book for adjudication purpose on 20.12.2023.

**16.** In view of above, I find that Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4- 29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4- 27/O&A/2016-17 dated 13.10.2017 retrieved from call book on 20.12.2023 and the case is being taken for adjudication. I find that CESTAT Ahmedabad vide Final Order No.- A/11915/2023 dated 11.09.2023 has held that the activity carried out by the M/s. Deep Industries Limited is indeed a manufacturing activity in terms of Section 2 (f) (ii) of Central Excise Act, 1944 read with chapter note 5 of Chapter 27 and the Learned Commissioner has rightly dropped the proceeding of the show cause notice. Relevant para of said judgement is reproduced below:-

*"4. We have carefully considered the submission made by both sides and perused the records. We find that the adjudicating authority has dropped the demand of service tax on the ground that the activity carried out by the appellant amounts to manufacture in terms of note 5 to Chapter 27 of Central Excise Tariff. For ease of reference the said chapter note is reproduced below:-*

*"5. In relation to natural gas falling under heading 2711, the process of compression of natural gas (even if it does not involve liquefaction), for the purpose of marketing it as Compressed Natural Gas (CNG), for use as a fuel or for any other purpose, shall amount to 'manufacture'."*

*From the reading of the above chapter note it is clear that compression of natural gas is amount to manufacture and no condition was attached to the activity of compression therefore, the activity carried out by the appellant is indeed a manufacturing activity in terms of Section 2 (f) (ii) of Central Excise Act, 1944 read with chapter note 5 of Chapter 27 which mandates that the activity of compression of natural gas for the purpose of marketing it as Compressed Natural Gas(CNG) for use as a fuel or for any other purpose shall amount to manufacture.*

5. Accordingly in our considered view, the Learned Commissioner has rightly dropped the proceeding of the show cause notice, therefore, we do



*not find any infirmity in the impugned order. Hence the same is upheld, Revenue's appeal is dismissed. Cross Objection also stands disposed of.*


17. I find that CESTAT Ahmedabad vide above order dated 11.09.2023 has held that the activity carried out by the M/s. Deep Industries Limited is a manufacturing activity in terms of Section 2 (f) (ii) of Central Excise Act, 1944 and accordingly upheld decision of the Commissioner, Service Tax Ahmedabad taken in OIOs No. STC/25/COMMR/AHD/2013 dated 4.7.2013 wherein proceedings initiated against the said assessee was dropped. Accordingly, I find that CESTAT Ahmedabad has passed a categorical order in the present matter and the issue has reached its finality. Hence, I am of view that there is no further discussion needed on this issue. As the matter has already decided in favour of the said assessee, I find that Show Cause Notices No. (i) STC/4-45/ O&A/13-14 dated 17.04.2014, (ii) STC/4- 29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4- 27/O&A/2016-17 dated 13.10.2017 is not sustainable and said three SCNs issued to M/s. Deep Industries Limited, demanding service tax, proposing interest and penalty is to be withdrawn.

18. Further, I find that in the case of Kamlakshi Finance Corporation Ltd, as reported in 1991 (55) E.L.T. 433 (S.C.) in which the Hon'ble Supreme Court of India has observed that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Accordingly, I have to follow the Final Order No.- A/11915/2023 dated 11.09.202 passed by the CESTAT Ahmedabad in present matter.

19. In view of the foregoing discussion and findings, I pass the following order;

**ORDER**

- I. I hereby order to drop proceedings initiated against M/s. Deep Industries Limited, 12A & 14, Abhishree Corporate Park, Ambli Bopal Road, Ambli, Ahmedabad 380058 vide Show Cause Notices No. (i) STC/4-45/O&A/13-14 dated 17.04.2014, (ii) STC/4- 29/O&A/2015-16 dated 04.09.2015 and (iii) STC/4- 27/O&A/2016-17 dated 13.10.2017,

  
(Lokesh Damor)  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.NO.STC/4-45/OA/2013-14  
By Regd. Post AD./Hand Delivery

Dated 09.02.2024

To  
M/s. Deep Industries Limited.  
12A & 14, Abhishree Corporate Park,  
Ambli Bopal Road,  
Ambli, Ahmedabad 380058

Copy to:

- 1 The Commissioner of CGST & C.Ex., Ahmedabad North.
- 2 The Deputy Commissioner Division-VI, Central Excise & CGST, Ahmedabad North.
- 3 The Superintendent, Range-I, Division-VI, Central Excise & CGST, Ahmedabad North
- ✓ 4 The Superintendent (System) CGST, Ahmedabad North for uploading on website.
- 5 Guard File