

**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/04-05/2015

In

**Application Nos. AAR/44/ST/02/13
AAR/44/ST/04/13**

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

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/02/13) and M/s GSPL India Gasnet Limited (F.No. AAR/44/ST/04/13) (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. Applicant will be engaged in rendering taxable service in the nature of transport of gas through pipelines, classified under the erstwhile taxable category of "Transport of goods through pipeline or other conduit service", under section 65 (105) (zzz) of the Finance Act, 1994, as it existed prior to July 1,2012. Applicant proposes to avail the benefit of Cenvat credit in respect of the 'capital goods' and utilizing the same for discharging its output service tax liability. Applicant proposes to adopt engineering, procurement and construction ("EPC") model for laying of gas transmission pipelines. The proposed activity, as described by the applicant, is as under;

4. The activity of laying of pipelines 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-with 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 a 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. For the purposes 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, applicant would grant various turnkey contracts (“EPC Contracts”) involving supply of pipes and valves as well as installation and commissioning of the said pipes and valves to bring into existence a pipeline connecting the source to the destination. 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, onshore services and offshore services.
- c) Supply of mandatory spare within and outside India
- d) A civil works package for constructing the pipelines sub-stations

5. Under the EPC Contracts, the applicant will procure the pipes and valves from the EPC Contractors, under a “Bill to ship to” arrangement whereby, the pipes and valves purchased by EPC contractors from the manufacturers would be directly shipped by such manufacturers to the applicant’s project site (with applicant as consignee) under the cover of appropriate statutory documents/invoice. Further, it would be specifically provided in terms of the EPC Contracts that the ownership of such pipes and valves would pass to the applicant from the EPC Contractor(s) ex works at the manufacturer’s factory (after the necessary inspection, verification and quality clearances at the manufacturer’s factory). Thus the pipes and valves for the pipeline would be owned and received by the applicant at the site as pipes and valves itself i.e. chattel qua chattel. The manufacturer would dispatch the pipes and valves to the applicant under a manufacturer’s invoice as mandated under Rule 11 of the Central

Excise Rules, 2002. Upon receipt of the pipes and valves at the project site, the applicant would issue the same to the EPC Contractors free of cost (on bailment) for laying the pipeline along the identified route. The receipt of the pipes and valves and the issuance thereof to the EPC Contractors would be evidenced by appropriate documentation. The applicant would use the pipes and valves so received under the EPC Contracts for transport of gas through pipelines thereby using the pipes and valves for rendering taxable output service.

6. Applicant further submits that the EPC Contracts awarded by the applicant to the various EPC Contractors would involve both supply of goods like pipes and valves 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 and valves from the applicant. In fact, separate invoices would be raised by the EPC Contractors for the sale of pipes and valves and provision of construction / erection, installation and commissioning services for the laying of the pipelines. In respect of provision of services for erection and commissioning of pipelines, the EPC Contractors would qualify their services as “works contract services” and discharge service tax accordingly.

7. Applicant submits that without the pipes, there would be no pipeline and consequently, provision of the taxable output service of transport of goods through pipeline would be impossible, thereby establishing an inextricable link between the pipes and the output services. That, the pipes fundamentally have a functional utility qua the output services of the applicant as it is the aggregate of these conduit via which the goods are transported and there exists an integral nexus between the process involved in provision of the output services and the use of the pipes; that without the pipes, provision of the output services of the applicant of transport of goods through pipelines would not only be commercially inexpedient, but also theoretically and practically impossible; that without the pipes, pipeline services would not ever be possible; that the applicant submits that the eligibility of an assessee to avail Cenvat

credit of capital goods and admissibility of Cenvat credit on capital goods can be determined only in accordance with the Credit Rules. Applicant further submits that even the restriction on availment of CENVAT credit under the Valuation Rules, would not adversely impact the credit eligibility of the applicant vis a vis the capital goods in question. Applicant submits that 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 Act, post July 1, 2012] and discharge Service Tax accordingly to one of the options given under Rule 2A of Service Tax (Determination of value) Rules, 2006.

8. As per the Explanation 2 to Rule 2A of Service Tax (Determination of Value) Rules, 2006, applicant submits that restriction on credit availment is on the provider of taxable service viz., the EPC Contractors and no restriction on availment of credit has been prescribed for service recipients like the applicant; that accordingly, he would be eligible for credit under this option. Further, applicant submits that they are not availing any exemption on condition of non availability of “credit of duty paid on any input or capital goods or of service tax paid on input service”, therefore, there is no warrant to invoke the above Explanation to Rule 3(7) of Cenvat Credit Rules, to deny credit of capital goods to the applicant; that thus, the provisions of Valuation Rules as above cannot be used to restrict credit availment by the applicant.

9. Applicant submits that he would fulfill all the statutory requirements for availment of credit of excise duty paid on pipes and valves by manufacturers against the applicant’s output service tax liability; that accordingly, the applicant would be eligible to avail credit of excise duty paid on pipes and valves by manufacturers against the applicant’s output service tax liability for the taxable services of transport of gas through pipeline. In the light of the above facts, the applicant sought advance ruling on the following question:

Whether the Applicant is eligible to avail Cenvat Credit of excise duty that would be paid on the pipes and valves procured from the manufacturer against the Applicants’ output service tax liability for services in the nature of transport of gas through pipeline?

10. Revenue has raised certain issues, which are discussed, as under;

11. 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 observed that the Authority for Advance Rulings (AAR) 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 also 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.

12. Second issue raised by the Revenue is that the applicants would receive constructed pipeline system which is embedded to the earth and therefore cannot be termed as "goods" for availing Cenvat credit of duty, as they are neither moveable nor marketable, as mentioned in Central Board of Excise & Customs (CBEC) Order no. 58/2002-CX dated 15.01.2002 issued under Section 37 B of the Central Excise Act, 1944. Revenue further contended that Cenvat Credit of duty paid on pipes used in constructed pipeline system would not be admissible to them in terms of Rule 2 of Cenvat Credit Rules, 2004, which define "input" and "capital goods". As pipes etc. gets transformed into pipeline systems, which in-turn gets embedded to earth, they become immoveable property and therefore, can-not be goods. Revenue relied upon the judgment of Hon'ble High Court of Bombay in the case of Bharti Airtel Ltd. vs. Commissioner of Central Excise 2014 (35) STR 865 (Bom). It is observed that the question before the Hon'ble High Court was whether the appellant i.e. cellular telephone

company, would be eligible to avail Cenvat credit of excise duty paid on tower and parts, pre-fabricated building and printers which are fastened and are fixed to the earth. Hon'ble High Court observed that the towers are immovable property and non excisable and hence, can neither be regarded as capital goods so as to fall within the definition of "Capital Goods" appearing in Rule 2 (a) of the Cenvat Credit Rules nor can be categorized as 'input' falling under Rule 2 (k) of the Cenvat Credit Rules. In-fact, Hon'ble High Court at para 31 concluded that a combined reading of sub-clause (a) (A) (i) and (iii) and sub rule (2) of the Cenvat Credit Rules indicates that only the category of goods in Rule 2 (a) (A) falling under clause (i) and (iii) used for providing output services can only qualify as capital goods and none other. Hon'ble Court further observed that goods in question, namely; the tower and part thereof, the PFB and the printers do not fall within the definition of capital goods and hence the appellants cannot claim the credit of duty paid on these items.

13. As per Rule 2 (a) of Cenvat Credit Rules, 2004 "Capital Goods" means:-

(i) All goods falling under chapter 82, Chapter 84, Chapter 85, chapter 90, heading no. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First schedule to the Excise Tariff Act:

x x x x x

(vi) tubes and pipes and fittings thereof:

Used –

x x x x x

(2) for providing output service.

x x x x x

14. It is observed that pipes are specifically mentioned at (vi) and valves (it falls under Chapter 84) at (i) in Rule 2 (a) of the Cenvat Credit Rules. Further, pipes and valves are proposed to be used for providing output service of transport of gas through pipelines. As they are specifically mentioned under the definition of "capital goods", even though pipes may be immovable and are to be used for providing output service, they are "capital goods". This argument further gets support from the fact that "storage

tank” though immovable property has been categorized as “capital goods” under Rule 2 (a) (A) (vii) *ibid*. Therefore, pipes and valves are “capital goods”. CBEC Order dated 15.01.2002 relied upon by the Revenue is also not applicable to the present case, as here capital goods are to be used for providing output service and not in the manufacture of plant and machinery for the purpose of levy of Central Excise duty.

15. Revenue has raised another issue that pipes, fittings etc are received by EPC contractors who are service providers in the first instance and subsequently in the works executed by them under works contract results into an immovable property. The pipes and fittings no longer remain capital goods but after their erection along-with certain other structures and civil works become pipeline system, which no longer be termed as capital goods. At the most they can be termed as capital assets. Applicant submits that whether or not an item qualifies as a “Capital good” for the purpose of Cenvat Credit Rules has to be determined at the time of receipt of such goods and any change in the goods subsequent to the receipt, would not be relevant. Applicant in support of their contention relied on the Larger Bench order in *Spenta International Ltd. Vs Commissioner of Central Excise, Thane 2007 (216) ELT 133 (Tri L.B)*, wherein it was held that credit eligibility is to be determined with reference to the date of receipt of capital goods. In the instant case, pipes etc (capital goods) are used by EPC contractors for providing construction / erection, installation and commissioning services. Therefore, in present case, capital goods (pipes and valves) are to be used for providing output service and it is not relevant whether these goods provide such service by being embedded to the earth. Therefore, we agree with the applicant that the relevant date to determine whether an item qualifies to be ‘capital good’ is the time of its receipt and not subsequent date.

16. Next issue raised by the Revenue is that the EPC Contractors who received the duty paid pipes and valves (capital goods) for laying the pipeline, were only eligible to take Cenvat Credit on capital goods under Rule 3 of Cenvat Credit Rules, 2004 and not the applicants. Revenue submits that as per Explanation to Rule 3 (7) (c) of Cenvat Credit Rules, where the provision of any other rule or notification provide for grant of

whole or part exemption on condition of non availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules. Further, Explanation 2 to Rule 2A of Service Tax (Determination of Value) Rules, 2006 clarifies that the provider of taxable service shall not take Cenvat Credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of Cenvat Credit Rules, 2004. Revenue submits that on combined reading of above referred explanations, applicant is not eligible to take Cenvat Credit of Central Excise duty paid on capital goods i.e. pipes and valves.

17. Applicant submits that as per Explanation 2 to Rule 2A of Service Tax (Determination of Value) Rules, 2006, the restriction on availment is on the provider of taxable service i.e. EPC contractors and no restriction on availment of credit has been prescribed for service recipients like the applicant; that he is eligible for credit under this option. Further, applicant submits that they are not availing any exemption on condition of non-availability of credit of duty paid on any input or capital goods or of service tax paid on input service, therefore, there is no warrant to invoke Explanation to Rule 3 (7) of Cenvat Credit Rules, to deny credit of capital good to the applicant.

18. It is observed that as per Explanation to Rule 2 A of Service Tax (Determination of Value) Rules, 2006, provider of taxable service shall not take Cenvat Credit of duties or cess paid on any inputs used in or in relation to works contract. In view of this Explanation, provider of taxable service i.e. EPC contractors do not propose to take any Cenvat credit on pipes and valves, as they desire to avail benefit of Rule 2 A of said Rules, i.e determining the value of service portion in the execution of works contract. As EPC contractors are to avail benefit of Rule 2A *ibid*, they shall not take Cenvat Credit of duty paid on pipe and valves under Rule 3 of Cenvat Credit Rules, due to such restriction imposed by virtue of Explanation to Rule 3 (7) (C) of said rules. Now the question comes whether applicant can take the Cenvat Credit of Central Excise duty paid on the pipes and valves, which are purchased by him from EPC Contractor, who in-turn has purchased the same from the manufacturer. Rule 3 of Cenvat Credit Rules,

2004 inter-alia permits provider of output service to take credit of duty of excise paid on any input or capital goods received by the provider of output service. In the instant case, duty paid pipes and valves are to be received by the applicant, who is service provider. Conditions mentioned in Rule 3 ibid are satisfied by the applicant; therefore he is eligible to take Cenvat Credit of Central Excise duty paid pipes and valves received by him as service provider. Further, during arguments before this Authority, we were informed by the applicant that the above procedure i.e. applicant taking Cenvat Credit of Central Excise duty paid on pipes and valves is revenue neutral, which was not opposed by the Revenue.

19. Another issue raised by the Revenue is that the documents under which the applicant proposes to avail Cenvat credit are not the proper documents under Rule 9 of Cenvat Credit Rules, 2004. Revenue submits that Circular No. 96/7/95-Cx dated 13.02.1995 issued by the Central Board of Excise & Customs (CBEC) clarifies that the credit is admissible even if the goods are sent directly to the user's premises and invoice is issued by a Registered Dealer; that said Circular is of no avail to the applicant, as EPC contractors are not registered dealers. Revenue further submits that transfer to possession of property vested in pipes will take place in following 4 instances;

- a) From pipe manufacturer to EPC Contractor through a sale invoice;
- b) From EPC contractor to applicants on site;
- c) From applicants to EPC contractor on site; and
- d) From EPC contractor to applicant by virtue of transfer of property in goods involved in execution of EPC contract;

that in spite of transfer of property at above four stages, only first and fourth instances can be termed as "sale" under Section 2 (h) of the Central Excise, Act, 1944, in view of the fact that in said two instances, transfer of possession of goods (pipes) are actually associated with payment/consideration. Revenue concludes that under Rule 9(1) (a) of Cenvat Credit Rules, invoice issued by the manufacturer becomes a valid document for the EPC contractor only, to avail credit of duty paid on pipes; that even if applicant would get possession of pipes in transition, it is not for a consideration and thus no sale

could be held to have taken place between pipe manufacturer and applicant, therefore, Rule 9(1)(a) *ibid* will not be satisfied; that thus availment of Cenvat Credit of duty paid on pipes by applicant on the invoice under consideration would be incorrect.

20. Applicant submits that they would procure the pipes and valves purchased by EPC contractors from the manufacturers, which would be directly shipped by such manufacturers to the applicant's project site under the cover of appropriate statutory documents/invoice showing applicant as consignee and same would be received by the applicant at the project site. Further, it would be specifically provided in terms of the EPC Contracts that the ownership of such pipes and valves would pass to the applicant from the EPC Contractor(s) *ex works* at the manufacturer's factory (after the necessary inspection, verification and quality clearances at the manufacturer's factory); that pipes and valves for the pipeline would be received by the applicant at the site as pipes and valves itself i.e. *chattel qua chattel*; that the applicant would issue the same to the EPC Contractors free of cost (on bailment) for laying the pipeline along the identified route; that at no point in time prior to issuance of pipes and valves by the applicant to EPC contractors, the EPC contractors would have possession of pipes and valves. Applicant submits that the manufacturer of pipes and valves would not raise the invoice on the applicant – he would merely dispatch the goods directly to the applicant as per instructions from the EPC contractors under the cover of a manufacturer's invoice (raised on the EPC contractor only); that actual invoicing would happen from manufacturer to EPC contractor to the applicant. Applicant submits that CBEC Circular No. 96/7/95-CX dated 13.02.1995 read with Circular No. 218/52/96-CX dated 04.06.1996 clarifies that movement of goods could take place directly on a Rule 52A invoice from the manufacturer's premises to the user's premises on an order being placed by the dealer of excisable goods without being brought to the latter's premises. It was further clarified that persons taking part in transit sale need not get themselves registered; that in the instant case, it is not necessary for EPC contractors to get registered under the Central Excise Act in order to take Cenvat credit by the applicant on manufacturers' invoice. Applicant submit that as far as transfer of possession of property vested in pipes is concerned, while the transfer of property would happen in

the pipes from the manufacturer to the EPC contractors, the possession of the pipes would be directly transferred to the applicant (since pipes and valves would be directly consigned to the applicant from the manufacture's premises); that there would be no transfer of possession of property in pipes and valves from EPC contractors to the applicant at the project sites, since the applicant would receive the pipes and valves as owners and then issue them on bailment to the EPC contractor for a specific purpose of providing services to bring into existence a pipeline.

21. In further written submissions, applicant states that vide a recent Notification No. 8/2015-Central Excise (N.T) dated 1.3.2015, Rule 11 has been amended and a proviso has been added mandating that "*if the goods are directly sent to any person on the direction of the registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and the person as the consignee, and that person shall take CENVAT credit on the basis of the registered dealer's invoice*"- essentially, what has been prescribed is that in a bill-to-ship-to scenario, the document for credit availment should be invoice raised by the intermediary dealer (in the present matrix- the EPC Contractor). Applicant submits that he undertakes to follow this new procedure. Applicant further submits that fundamentally, there is nothing under the Credit Rules or any other rules which restricts availment of credit in a scenario where a bill-to ship-to arrangement is followed. Bill-to ship- to arrangement that will be adopted by the applicants wherein, pipes and valves purchased by the EPC Contractor from the manufacturer would be directly shipped to the applicants (as a consignee) under the cover of the manufacturer's invoice and other documents, is widely followed industry practice which is well accepted by the department as well. Applicant further submits that bill-to-ship-to arrangements have always been valid for the purposes of credit availment and they continue to be valid even now. The only thing that has changed vide the recent notification no. 8/2015-Central Excise(N.T.) dated 1.3.2015 is that the document used for availment of credit of applicants has changed – it has now been prescribed that the document for credit availment should be the invoice raised by the intermediary dealer (in the present factual matrix- the EPC Contractor) – given that the applicants undertake to follow this new procedure, no restriction exists under any law vis a vis

CBEC vide Circular No. 96/7/95-CX dated 13.02.1995 read with Circular No. 218/52/96-CX dated 04.06.1996 clarified that movement of goods could take place directly on a invoice from the manufacturer's premises to user's premises on an order being placed by the dealer of excisable goods without being brought to latter's premises. Further, person taking part in transit sale need not be registered. It is further mentioned that in such a situation manufacturer will issue an invoice under Rule 52A and registered person's invoice is not required for availment of Modvat Credit; that the duplicate copy of manufacturer's invoice under Rule 52A will serve as cover for transport and for availment of Modvat by the end user. Therefore, it is clear that EPC contractor, who buys the goods from the manufacturer, may direct said goods to be delivered at applicant's site, without it coming to the premises of EPC contractor. Further, EPC contractor need not be a "registered dealer" with the Central Excise.

26. It is observed that the transfer of property would happen in the pipes from the manufacturer to the EPC contractors but possession of the pipes would be directly transferred to the applicant (since pipes and valves would be directly consigned to the applicant from the manufacture's premises). Also, there would be no transfer of possession of property in pipes and valves from EPC contractors to the applicant at the project sites, since the applicant would receive the pipes and valves as owners and then issue them on bailment to the EPC contractor for a specific purpose of providing services to bring into existence a pipeline. Therefore, the contention of Revenue that when pipes and valves are transferred from manufacturer to the applicant, applicant would get possession of pipes and valves from the manufacturer but same is not for consideration and thus, there would be no "sale" in terms of Section 2 (h) of Central Excise Act, 1944, - is factually incorrect.

27. Applicant has submitted that ownership of pipes and valves would pass to the applicant from EPC contractors at manufacturer's factory itself. Pipes and valves would be received by the applicant at the site. The manufacturer would dispatch these goods to the applicant under a manufacturer's invoice as per Rule 11 of Central Excise Rules. In the invoice, applicant would be shown as consignee, as envisaged in Rule 11(2) of Central Excise Rules. Rule 11 ibid has been recently amended vide Notification

No. 8/2015-Central Excise (NT) dated 01.03.2015. Third proviso to Rule 11(2) of Central Excise Rules state that if goods are directly sent to any person on the directions of the “registered dealer”, the invoice shall also contain the details of the “registered dealer” as buyer and person as consignee and person shall take Cenvat Credit on the basis of “registered dealer’s” invoice. In further written submissions, the applicant has submitted that the document for credit availment should be the invoice raised by the “intermediary dealer” i.e. EPC contractor and they undertake to follow this new procedure. In short, the contention of the applicant is that they would take Cenvat Credit of Central Excise duty paid on pipes and valves on the basis of invoice raised by the “intermediary dealer” i.e. EPC contractor. It is noticed that as per Rule 9 of Cenvat Credit Rules, 2004, Cenvat Credit can be taken inter-alia by provider of output service (i.e. applicant in this case), on the basis of any of the following document;

1. An invoice issued by
 - (i) a manufacturer
 - (ii) an importer
 - (iii) an importer from his depot etc.
 - (iv) a first stage dealer or a second stage dealer
2. a supplementary invoice issued by manufacturer etc.
3. a supplementary invoice, bill or challan issued by a provider of output service
4. a bill of entry
5. a certificate issued by an Appraiser of Customs
6. a challan evidencing payment of Service Tax
7. an invoice, a bill or challan issued by a provider of input service
8. an invoice, bill or challan issued by an output service distributor

Applicant proposes to take Cenvat Credit of Central Excise duty paid on pipes and valves based on the invoice raised by “intermediary dealer” i.e. EPC contractor. It is observed that invoice issued by “intermediary dealer” is not one of the documents, on the basis of which Cenvat Credit can be taken until and unless “intermediary dealer” is a “registered dealer”. Recent amendment vide Notification No. 8/2015-Central Excise (NT) dated 01.03.2015 to Rule 11 of Central Excise Rules mandate that if goods are directly sent to any person on the directions of “registered dealer”, then the person to whom goods are sent directly, shall take Cenvat Credit on “registered dealer’s” invoice. It is noticed that Tribunal judgments relied by the applicant i.e. CCE, Coimbatore Vs. SSPE Cotton Mills (P) Ltd and Mahadev Industries vs. CCE, Belgaum, wherein it was held that invoice having both dealer’s as well as user of goods name, but directly supplied to the user, is a valid document, is not applicable to this case. In said both cases, modvat credit was sought to be taken on the basis of manufacturer’s invoice, which is one of the documents on which Cenvat Credit can be taken as per Rule 9 of Cenvat Credit Rules.

28. It can be concluded that EPC contractor, who pays for the goods to the manufacturer, may direct said goods to be delivered at applicant’s site, without it coming to the premises of EPC contractor and he (EPC contractor) need not be a “registered dealer” with the Central Excise. However, applicant cannot take Cenvat Credit of Central Excise duty paid on pipes and valves on the basis of invoice issued by “intermediary dealer”, until and unless, this intermediary dealer is a “registered dealer”. Therefore, the contention that the applicant is eligible to Cenvat credit of Central Excise duty paid by the manufacturer on pipes and valves on the basis of documents issued by “intermediary dealer”, would be as per Central Excise Rules read with Cenvat Credit Rules, only when said “intermediary dealer” is a “registered dealer”.

29. In view of above, we are of the view that applicants i.e. M/s GSPL India Transco Limited (F.No. AAR/44/ST/02/13) and M/s GSPL India Gasnet Limited (F.No. AAR/44/ST/04/13) are eligible to avail Cenvat Credit of excise duty that would be paid on the pipes and valves procured from the manufacturer against the applicant’s output service tax liability for services in the nature of transport of gas through pipeline,

provided, invoice for said Cenvat Credit of Central Excise duty on pipes & valves, is issued by “registered dealer”.

Sd/-

(S.S.Rana)
Member

Sd/-

(V.S.Sirpurkar)
Chairman