

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2025/06
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/07)

Date : 28.02.2025

Name and address of the appellant	:	M/s. Shell Energy India P Ltd., Office No. 2008, The Address, Westgate D Block, Nr. YMCA Club, S G Highway, Makarba, Ahmedabad, Gujarat – 380 051.
GSTIN of the appellant	:	24AAACH9143C1ZZ
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-8, Range-2, Division-1, Ahmedabad.
Advance Ruling No. and Date	:	GUJ/GAAR/R/2022/26 dated 11.5.2022
Date of appeal	:	17.06.2022
Date of Personal Hearing	:	8.11.2024
Present for the appellant	:	Shri Sujit Ghosh, Sr Advocate, Ms. Anshika Agarwal, Advocate & Ms. Vandana Natrajan.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal is filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Shell Energy India P Ltd., (hereinafter referred to as 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2022/26 dated 11.5.2022.

3. Briefly, the facts are enumerated below for ease of reference:



- The appellant, is a wholly owned subsidiary of M/s. Shell Gas B V Netherlands; that it owns & operates an LNG¹ regasification terminal at Hazira, Surat and is registered with the Department;
- that in addition to the services of regasification of LNG, they also provide certain incidental & ancillary services related to [i] unloading of LNG; [ii] storage of LNG in cryogenic tank; [iii] delivery of RLNG²;
- that NG³, a highly flammable gas is condensed into liquid state at close to atmospheric pressure by cooling down the gas to very low temperature (-160°C) for transportation; that upon receipt of LNG at the destination port it is again converted into gaseous state;
- the vaporization is achieved either through ORV⁴ method or through SCV⁵ method; that SCV is only a standby; that at all times, ORV is the primary and preferred mechanism for regasification of NG;
- that in terms of the agreement, the regasification charges are computed by multiplying the actual quantity of RLNG delivered with regasification tariff;
- that during the process of such regasification there is a loss of gas, which is termed as SUG⁶ which is a loss during regasification & is known as such in the oil and gas industry; that the SUG percentage is fixed at 0.66% of the actual gas discharged quantity of LNG by an LNG carrier in terms of clause 6.6 of the Agreement.

3.1 The appellant is of the view that they are not liable to pay GST on such SUG, which they term as a process loss. However, presently as abundant caution they are issuing a separate invoice mentioning the value of SUG and the GST on the same is discharged consequent to being collected from the appellant.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the following question, viz:

Whether the value attributable to SUG stipulated in the agreement between the applicant and customers is subject to levy of GST and therefore, liable to be included in the consideration for re-gasification services determined as per section 15 of the CGST Act?

5. Consequent to hearing the applicant, the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings viz

- the issue is whether SUG value invoiced by M/s. Shell on its customer is leviable to GST;
- the customers of the appellant are not paying the value mentioned in the invoices but are only paying the GST involved;
- three SCNs came to be issued for the period 07/2010 to 6/2017, demanding Service Tax during the legacy period on the SUG and the appellant opted for SVLDRS⁷ in respect of all the three SCNs;
- that the concept of SUG is same under both the tax regimes – legacy and GST;

¹ Liquefied Natural Gas

² Re-gasified LNG

³ Natural Gas

⁴ Open Rack Vaporizer

⁵ Submerged Combustion Vaporizer

⁶ System Use Gas

⁷ Sabka Vishwas Legacy Dispute Resolution Scheme



- that gas is used by the appellant during the process of SCV; that SUG prima facie is not a loss but the gas is being used in the plant for the smooth flow of regasification service supply; that SUG amount has nexus with regasification service supply;
- that in terms of section 105, *ibid*, statements recorded by DGCEI of the appellant's personnel can be relied wherein it is stated that gas is required during re-gasification process; that during shutdown/breakdown/ power failure RLNG is lost; that during unloading gas is used; that gas is also used during planned maintenance of the system;
- that had the appellant purchased gas for these procedures, it would have added to the cost of purchase towards provision of service;
- that further the uncertainty in gas measurement loss can be both negative as well as positive; that negative loss means there is gain in stock of gas for the appellant;
- that gas charge is a cost on re-gasification services; that it is an expenses incurred by the appellant;
- that consideration includes any payment in money or otherwise;
- that the case law cited are different in facts.

6. The GAAR, vide the impugned ruling dated 11.5.2022, held as follows:

1. The scope of Re-gasification Services covers not only the services related to regasification of LNG into RLNG on behalf of M/s Shells customers but includes allied, incidental and ancillary services such as receipt of LNG Carriers at the Port, unloading of LNG from LNG carriers and its receipt at Terminal receipt point, temporary storage of LNG in storage tanks and delivery of RLNG to the customers, as detailed at para 2.

2. Thus this SUG [(a) gas used as fuel by Shell in GTG/ SCV; (b) gas used by M/s Shell for safety procedures by flaring/ venting out, even in cases of shutdown/ breakdown/ power failure when gas is vented out for safety reasons in the process of draining, purging and cooling down; (c) gas used by M/s Shell in maintenance of re-gasification equipment; (d) gas vented out by M/s Shell for cooling of BOG compressor; (e) gas flared out by M/s Shell to maintain tank pressure; (f) gas used by M/s Shell on account of unloading arms purging and warming, so gas is vent out into the atmosphere without flare] is a cost for Supplier of Service M/s Shell and thereby to be allocated into cost of provision of Regasification Service Supply. Vide this business contract, M/s Shell translates the cost of SUG required into SUG value by raising GST Tax invoices to its customers under item description- value of SUG.

3. Further, in cases where measurement uncertainties are in negative as discussed at para 93 (C), in such cases, this translates that System use gas provided by its customers, as per contract is retained by M/s Shell, as negative measurement means excess of Gas and not shortage of gas.

4. Thus value of SUG is an indispensable part of taxable value, for Re-gasification service supply by M/s Shell and liable to GST.

7. Aggrieved by the impugned Ruling dated 28.09.2022, the appellant is before us, raising the following contentions, *viz*

- GAAR erred in holding that the appellant uses SCV method; that they use the ORV method which is not dependent upon power; that rarely SCV method is used for regasification;
- GAAR failed to appreciate that the use of SUG is only incidental & not intended to qualify as consideration;



- that the impugned ruling is silent on process loss in trade parlance;
- that SUG is an internationally recognised concept which is an estimation of gas lost during the process of regasification; that allocation of gas towards loss is an internationally recognised concept for limiting the risk associated with process loss; that they have relied on two experts report which cannot be discarded without reason;
- that reliance placed on the SCN issued for demand of Service Tax is irrelevant and unwarranted;
- that in the legacy regime process loss was not subject to tax;
- that SUG is nothing but LNG & is therefore outside the purview of GST;
- that GAAR failed to appreciate the two judgements in the case of Petronet LNG Ltd⁸;
- SUG does not qualify as consideration under GST; that in order to qualify as consideration it should be [i] monetary or non-monetary [ii] received in respect or inducement of supply; [iii] made by the recipient or by any other person; that there is no non-monetary consideration involved;
- that there is no nexus between the SUG and the service provided by the appellant;
- that SUG does not fall within the ambit of either section 15(2)(b) or (c), *ibid*; that it does not fall within 15(2)(b) since it is not an amount incurred by the recipient & is a process loss; that it is not covered under 15(2)(c) because it is not an incidental expense charged by the appellant to the customer but a process loss;
- that the GAAR has failed to appreciate that in the eventuality of a positive SUG, the appellant would have to bear the cost;
- that to qualify as consideration the same should be a desire of the promisor, which is a fundamental principle of Contract Act; that in the present case neither the customer nor the appellant desire SUG.

8. Personal hearing in the matter was held on 08.11.2024, wherein Shri Sujit Ghosh, Sr Advocate, Ms. Anshika Agarwal, Advocate and Ms. Vandana Natrajan, appeared on behalf of the appellant and reiterated the grounds of appeal. They submitted a compilation relying on the below mentioned case laws *viz*

- Petronet LNG Ltd⁹
- Staatssecretaris van Financiën v Cooperatieve Aardappelenbewaarplaats GA¹⁰
- R J Tolsa v Inspecteur der Omzetbelasting Leeuwarden¹¹
- Apple & Pear Development Council v Commissioner of Custom & Excise¹²
- Motor & General Stores P Ltd¹³
- A P Jaiswal & Ors¹⁴
- Hydrogas PLG (I) P Ltd¹⁵
- Bee Kay Cement Ltd¹⁶
- Hipolin Ltd¹⁷
- Hindustan Copper Ltd¹⁸
- Kirloskar Oil Engines Ltd¹⁹

⁸ 2019-VIL-659-CESTAT-Del-ST & 2021-VIL-118-CESTAT-ST

⁹ 2019-VIL-659-CESTAT-ST & 2021-VIL-118-CESTAT-Del-ST

¹⁰ Case 154/80

¹¹ Case C-16/93

¹² Case 102/86

¹³ CA 819/1996

¹⁴ CA 4799-4844/1997

¹⁵ 2005-VIL-218-CESTAT-MUM

¹⁶ 2005-VIL-219-CESTAT-MUM

¹⁷ 2011-VIL-183-CESTAT-AHM

¹⁸ 2012-VIL-164-CESTAT-MUM

¹⁹ 2016-VIL-1184-CESTAT-MUM



- Baroda Electric Meters Ltd²⁰
- ISPL Industries Ltd²¹
- Mangalore Refinery & Petrochemicals Ltd²²
- Murli Realtors P Ltd²³
- Godawari Power & Ispat Ltd²⁴
- REPCO Home Finance Ltd²⁵
- Intercontinental Consultants and Technocrats Ltd²⁶
- E Square Leisure P Ltd²⁷
- Mariroku UT India P Ltd²⁸
- Vodafone Portugal²⁹

9. The appellant thereafter vide email dated 6.1.2025 [11:06 AM] submitted additional written submissions dated 4.1.2025, raising the following averments viz

- that the emphasis laid on the use of SUG is totally irrelevant as they use the ORV technology; that SCV technology is used only in exceptional cases and under normal operation it is in standby;
- that ORV does not use SUG and instead uses sea water as heating medium; that the primary source of power to run the GTG is the electricity supplied by the State Electricity Grid;
- that loss of gas during various stages of the regasification process is owing to the following reasons:
 - inherent losses on account of the nature of LNG and RLNG;
 - losses in the system during the process of unloading, storage and regasification of natural gas;
 - inaccuracies or uncertainties in the measurement of losses as well as natural gas in the system while undertaking the above processes;
 - use of the gas during certain exigencies and as an exception in running equipment such as Gas Turbine Generator (GTG) and Submerged Combustion Vaporizer (SCV).
- that the contract is to provide LTCOR³⁰ services;
- that the purpose of SUG is in the nature of remission to avoid situations triggering imposition of penal consequences i.e. liquidated damages/termination; the concept of **remission** is well known under the Section 63 of the Indian Contract Act, 1872;
- The below mentioned perversities and infirmities in the impugned ruling makes it ex facie bad in law:
 - that in respect of the gas turbine generators (GTG) the primary source of power is the power supplied by the State Electricity Grid;

²⁰ 1997-VIL-26-SC

²¹ 2003-VIL-38-SC

²² 2015-VIL-167-SC

²³ 2015-VIL-28-CESTAT-MUM

²⁴ 2017-VIL-451-CESTAT-MUM

²⁵ 2020-VIL-309-CESTAT-CHE

²⁶ 2018-VIL-11-SC

²⁷ 2019-VIL-114-AAR

²⁸ 2008-VIL-07-SC

²⁹ Case C-43/19

³⁰ **LTCOR services** means the services related to re-gasification of LNG into RLNG on behalf of User including allied, incidental and ancillary services such as receipt of LNG Carriers at the Port, unloading of LNG from LNG Carriers and receipt by Terminal Co of such LNG at the Receipt Point, temporary storage of LNG in the LNG Storage Tanks and delivery of RLNG, each as described in this Agreement.

- the SCV is operated intermittently and on need basis; that under normal operation, it is in standby because primary equipment used as vaporizer is ORV;
- how SUG is covered under consideration in terms of section 15 for inclusion of these for valuation of the regasification services is not explained;
- that section 15(2)(b) applies only if there is a contract which expressly provides that a certain cost has to be incurred by the Supplier but factually, the service recipient has incurred that cost; that in the absence of any such contractual liability, it cannot be added for computation of GST;
- that the cost of such SUG is never charged from the Customer and hence, not borne by the Customer; that what is charged is only the GST component on the SUG;
- that Courts cannot twist terms of the Contract or introduce words and concepts not provided for in the contract;
- that there is no contractual liability of the Appellant under the Agreement to procure the SUG to be used to run GTG/SCV or for unloading;
- that as SUG is considered as a process loss in the Oil and Gas industry the Authority cannot treat it as a consideration on its own whims and fancies;
- that none of the provisions under the GST Act, provides that merely because something is used for provision of services they qualify as consideration;
- that as far as SVLDRS goes, AAR ignored the FAQ's and Circular No. 1071/4/20019- CX.8 dated 27.08.2019 wherein it is stated that a declaration under the scheme will not be a basis for assuming that the declarant has admitted the position;
- SUG is not a cost of the supplier as it does not satisfy the pre-requisites u/s 15(2)(b);
- the conclusion that SUG forms a consideration and hence is part of the taxable value, is not supported by any concrete evidence or even law
- that even though the decision of M/s Petronet LNG Ltd.³¹ was relied, the AAR failed to take cognizance; that the Department (vide letter C. No. IV(16)Review /GST/South /CESTAT /Petronet/23/2019-20/2310 dt. 03.03.2021 by Review Branch) has accepted the above decision mentioned in the OIO No. 14/Refund/MC/Div-CP/221-22 dated 25.01.2022 in the case of M/s Petronet LNG Ltd.;
- that the concept of SUG is the same under the regime of service tax and GST, is same;
- that unless the contract states that the SUG made available to the Appellant is intended by the Parties for the inducement of regasification services, it cannot qualify as a Consideration.
 - that not a single clause exists which indicates that it was the intention of the parties;
 - that the concept of SUG is nothing but a remission, which is not the same as a consideration;
 - an amount equivalent to 0.66% has been carved out as a remission and accordingly, it is not required to be redelivered by the Appellant; that in substance SUG is nothing but a remission of an obligation under the Contract expressly agreed to between the parties as per principles set out under Section 63 of the Indian Contract Act, 1872;
 - that once SUG does not qualify as a consideration, it cannot form part of the value on which GST can be charged;
- The Ld. Authority has failed to understand the concept of 'process loss' contemplated under the agreement viz

³¹ 2019-VIL-659-CESTAT-DEL-ST

- that SUG as a process loss has been recognised by reputed Companies/organisations;
 - measurement uncertainties can occur while measuring volume and calorific value of LNG unloaded at the terminal and volume of send out LNG and its calorific value measurements;
 - for the Appellant's Terminal, the Report determines a conservative statistical estimate of SUG losses to be 1.22 per cent which is the sum of average of other losses of 0.19 percent and measurement uncertainties of 1.03 percent;
 - Industry practice is to have contracts based on a pre-aged regasification loss percentage including measurement inaccuracies and uncertainties for arriving at the net deliverable quantity;
 - that the contracted percentage of losses typically vary in the order of 0.66 percent to more than 1 percent within the Indian LNG industry and 0.3 percent to 2 percent as per international practice.
 - the gas allocated towards loss is not towards any specific service provided by the service provider and hence, the same does not partake the character of "consideration" in the hands of the service provider, at any time whatsoever.
- that SUG is not defined under the GST Laws and in absence of a statutory definition it must be construed in terms of their commercial or trade understanding or according to their popular meaning;
 - that process loss has not been subjected to tax even under the erstwhile regime.

10. Subsequently the appellant vide emails dated 6.1.2025 [5:11 PM], and 9.1.2025 submitted further clarifications.

11. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, additional submissions, the impugned ruling and other materials available on record.

12. Before dwelling on to the issue, we would like to reproduce relevant portions of the CGST Act, 2017, for ease of reference *viz*

CENTRAL GOODS AND SERVICE TAX, 2017

Section 15. Value of Taxable Supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;



- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

13. The primary averment raised is that SUG is nothing but a process loss. To verify the authenticity of the claim so made, during the course of personal hearing itself details were sought from the appellant. The appellant in his additional submission dated 6.1.2025 and further clarifications dated 6.1.2025 and 9.1.2025 provided a table depicting details, relating to SUG, which is as under:

Please see the table below, updated with Column 7 for details of the difference referred to, in your email:

1.	2.	3.	4.	5.	6.	7.
Year	Total quantum of regasification done	Total SUG Loss	Evaporated (Out of Total SUG Loss)	Used by Equipment/ Machinery/ Tools (Out of Total SUG Loss)	Other* (Out of Total SUG Loss)	Balance SUG retained by the Company, subsequently sold
2021-22	121283455	726175.18	0	347036.1	2296.57	376842.51
2022-23	100787344.8	594053.32	0	99844.5	2217.71	491991.11
2023-24	81253735.04	450062.3	0	10870.6	1632.51	417559.17
2024-Nov/24	74496555.117	400405.64	0	18543.2	920.34	380942.1

In the email dated 6.1.2025, the columns were explained as under:

- Column 2 contains details of the quantity of regasification undertaken for all customers during the relevant period.
- Column 3 contains details of total SUG loss as per the terms of the regasification contract with the customer.
- Column 4 contains details of SUG used by GTG, SCV, flare pilot burners, any quantified leaks and flare loss in case of any process disruption/ shutdowns/ any venting (slut maintenance or during shutdown jobs).
- Column 5 data contains details of unaccounted losses i.e. any emissions, pipeline losses or any LNG leaks.
- GTG: The terminal requires 130MW power at terminal design capacity (5 MTPA), which is supplied by the state electricity grid (primary source of power) and captive power gas turbines (standby source of power). Terminal has 3 Gas turbine Generators (GTGs) which are kept at standby. The gas turbines use fuel gas from importers to generate power. High Pressure fuel gas is required for GTG operation. The rated capacity of each turbine is 7.9 MW. Each turbo generator set is provided with an independent acoustic enclosure and a CO2 firefighting system.
- SCV: The terminal has one Submerged Combustion Vaporizer (SCV) of rated capacity 1.88 QPA, which uses fuel gas as the source of heat for conversion of LNG to Natural Gas. In the Submerged Combustion Vaporizer, a stainless-steel tube bundle is submerged in a bath of warm water. In this vaporizer, heat generated by burning fuel gas is used to warm the water which in turn vaporizes LNG. Bath water is heated by the use of flare gases created from the combustion of Low Pressure fuel Gas in a Combustion Chamber. SCV operation is intermittent and used on need basis. Usual normal operation it is in standby, because primary equipment as vaporizer is Open Rack Vaporizer (ORV) which uses sea water as heating medium.

14. The table *supra*, depicts the following *viz*
- the actual process loss [column no. 6] as a component out of the SUG, is **very meagre/insignificant**;
 - the data depicted in column 5 reveals the quantum utilized by the appellant towards re-gasification;
 - the data depicted in column 7 reveals that a **considerable portion** of the SUG was retained by the appellant which was subsequently sold.

15. The aforementioned data has been provided now for the first time, meaning thereby that the GAAR while arriving at their impugned ruling, which is in appeal before us, did not have the benefit of examining this data.

To that extent, the ruling has been delivered without taking such an important data into consideration.

16. Now, section 101(1) of the CGST Act, 2017, states as under *viz*

Section 101: Order of the Appellate Authority

*(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, **confirming or modifying** the ruling appealed against or referred to.*

[emphasis supplied]

17. A plain reading of the subsection (1) of the section 101, *ibid*, depicts that the appellate authority may pass such order as it thinks fit, by either confirming or modifying the ruling pronounced by the advance ruling authority.

18. The GAAR however, as is already mentioned, delivered its ruling without the benefit of examining the data, since it was provided for the first time before the Appellate Authority for Advance Ruling. In light of such a peculiar situation, in the interest of justice, we deem it appropriate to remand back the matter to the GAAR. We are mindful of the fact that section 101 of the CGST Act, nowhere restrains the Appellate Authority from referring a case back to the GAAR.

19. The wordings in section 101 of the CGST Act, 2017, reproduced *supra*, is almost similar to sections 35A of the Central Excise Act, 1944 and 85(5) of the Finance Act, 1994. To substantiate the aforementioned finding, we rely on the judgement of the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise vs Medico Labs and Anr.³². This is more so because the jurisprudence developed over the years may be referred as *pari materia* while ascertaining the ambit and scope of the powers of the Appellate Authority for Advance Ruling.

³² 2004(173) ELT 117 (Guj)




20. We also rely on the below mentioned rulings issued by various Appellate Authority for Advance Ruling wherein matters have been remanded to the Authority for Advance Ruling viz

- Myntra Designs Pvt Ltd³³
- D.M Net Technologies³⁴
- Portescap India Pvt Ltd³⁵
- D K V Enterprises Pvt Ltd³⁶

21. In view of the above discussion, the impugned ruling dated 11.5.2022, is set aside and the matter is remanded back to the Authority for Advance Ruling (i.e. the GAAR) for a fresh decision. The GAAR will take into consideration all aspects of the matter and decide the case afresh after affording adequate opportunity of hearing to the appellant.


(Rajeev Topno)
Member (SGST)


(B V Siva Naga Kumari)
Member (CGST)

Place: Ahmedabad
Date: 24.02.2025



³³ Karnataka AAAR Order No. KAR/AAAR/06/2022 dated 21.11.2022

³⁴ Gujarat AAAR order dated 22-08-2022 [2022-VIL-73-AAAR]

³⁵ Maharashtra AAAR order dated 3-11-2020

³⁶ Andhra Pradesh AAAR order dated 31-08-2020