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

ADVANCE RULING NO. GUJ/GAAR/R/2022/26

(In Application No. Advance Ruling/SGST&CGST/2021/AR/36)

Dated: 11.05.2022

Name and address of the applicant	:	M/s Shell Energy India Pvt. Ltd., Office No. 2008, The Address, Westgate-D Block, Nr. YMCA club, S. G. Highway, Makarba, Ahmedabad, Gujarat-380051
GSTIN of the applicant	:	24AAACH9143C1ZZ
Date of application	:	08-10-2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	*(c)*
Date of Personal Hearing	:	18-02-2022
Present for the applicant	:	Ms. Priyanka Rathi, Advocate and Shri Abhishek Nolkha, Sr. Tax Advisor of the Company.

Brief Facts

M/s Shell Energy India Private Limited (formerly known as Hazira LNG Private Limited) (hereinafter referred to as M/s Shell/Applicant for the sake of brevity) owns and operates a Liquefied Natural Gas re-gasification terminal (Terminal) at Village Hazira, District Surat, Gujarat and is, inter alia, engaged in providing services of re-gasification of LNG imported by Customers at the Hazira Port.

2. M/s Shell supplies services of re-gasification of LNG imported by Customers. M/s Shell also provides certain incidental and ancillary services related to unloading of LNG, storage of LNG in cryogenic tanks and delivery of Regasified LNG (RLNG) and these services are included in the scope of re-gasification services rendered by M/s Shell.

The scope of re-gasification services encompasses the following activities:

i. Receipt of LNG cargo/ carriers at the Hazira port;

ii. Unloading of LNG from the carriers and its receipt at Terminal's receipt point;

iii. Storing the imported LNG in the cryogenic tanks;

iv. Re-gasification of the LNG imported by the Customers into RLNG; and

v. Delivery of RLNG to the Customers at the delivery point

3. M/s Shell has submitted that keeping in view the nature of transaction, it is imperative to understand the nature of Natural Gas. Natural gas is a naturally occurring hydrocarbon gas mixture consisting primarily of methane. Methane being the primary constituent of natural gas, it gives the gas a highly flammable nature and makes it violently reactive and explosive if it

comes in contact with air (oxygen). Accordingly, for long distance transportation of natural gas through sea route, the gas is condensed into a liquid state at close to atmospheric pressure by cooling down the gas to very low temperatures (approx. minus 160 degrees celsius). Condensation of natural gas from gaseous to liquid state reduces the volume of gas by 600 times and thus, helps transport huge volume of natural gas by conversion of the same in liquid form. Upon receipt of LNG at the destination port, natural gas in liquid state is again converted into gaseous state.

4. The LNG re-gasification services provided by M/s Shell involves four major processes consisting of LNG unloading, LNG storage in cryogenic tanks, vaporizing of LNG into RLNG and RLNG send out for delivery to the Customer. In order to understand the technical aspects involved in the issue at hand, it is necessary to explain the re-gasification process undertaken at the Terminal. Therefore, role of each of the equipment significant for performance of said processes are explained below in brief:

(i) LNG unloading arm: The onshore jetty (an extended pier where the LNG vessels are berthed for unloading) at the Terminal is equipped with three unloading arms which are used for liquid gas transfer from the carrier to the cryogenic tank and back. The LNG is discharged from the tanker by the cargo pumps installed on the carrier, unloaded through the unloading arms and is then transferred into the onshore storage tanks.

(ii) LNG storage tanks: LNG unloaded from the ship is routed to the storage tank through a bottom filling line or a top filling line. Automatic continuous tank level gauging, density monitoring and density measurements are provided to the tanks. The first overpressure protection to the storage tanks is given through flaring. Pressure safety valves act as the second overpressure protection for the storage tanks. The third one is handled by the storage tank reserve capacity relief valve. There are LP high capacity and low capacity pumps fitted inside the tanks for pumping the LNG stored in the tanks.

(iii) Boil off gas handling unit: The principal role of the BOG compressors is to maintain a normal pressure in the storage tanks. This pressure naturally tends to increase during ship unloading due to heat input into the Tank. In the unloading mode and normal send out mode, the boil off gas is handled by operating BOG compressor thereby controlling the pressure of gas in the storage tank.

(iv) Re-condenser unit: The re-condenser unit is to re-condense the boil off gas by putting it in contact with sub-cooled LNG coming from the storage tanks. The LNG required to re-condense the boil off gas flows through packing of the re-condenser unit, whereas remaining flow (to HP pumps for re-gasification) is sent through the bottom part of re-condenser.

(v) LNG HP Pumps: HP pumps installed at the Terminal is a submerged pump including motor in a suction pot filled with LNG directly coupled to the pump. These pumps are required to generate high pressure essential for transportation of liquid natural gas through the vaporizer unit and natural gas (in gaseous form) upto the Customer delivery point.

(vi) Vaporizer Unit: Vaporization is achieved either by ORV or SCV. Both systems are maintained at full operable conditions for use in re-gasification process to meet the gas nomination quantities from Customers and users.

(vii) ORV: The ORV is an exchanger which uses sea water as external heat source. LNG flows upwards through vertical panels of the tubes and is vaporized by thermal exchange with a falling film of sea water.

(viii) SCV: The SCV is composed of a warm water tank where a stainless steel tube bundle is submerged. The water of the tank is directly heated from a submerged combustion burner which uses natural gas for its operation. The LNG is vaporized by passing through the tubes bundle where heated water acts as the heat exchanger. SCV is only a standby mechanism for re-gasification of natural gas at the Terminal and for this reason only one SCV has been installed at the Terminal. At all times, ORV continues to be the primary and preferred mechanism for re-gasification of natural gas.

(ix) Send out unit: The RLNG is transported through a 14-km long pipeline from the Terminal to village Mora (near Hazira). At the delivery point, Applicant's delivery pipeline is connected with the Customer pipeline. For effective delivery, the gas pressure of Applicant's pipeline has to be higher than the pressure of the transporter's pipeline. Such pressure is achieved through HP pumps installed at the Terminal. The pipeline is protected against overpressure from the Terminal by a high integrity protection system actuated by a high pressure detection system.

(x) HSE Process: All the equipment installed at the Terminal used in the re-gasification process contain flammable and high energy fuel in the form of LNG or its vapors in gaseous form. Hence, prescribed HSE conditions are followed for isolating machinery items for flaring of gas and LNG as per safety and pollution control standards during the planned maintenance or repair work to breakdown machinery.

5. M/s Shell submits that for provision of the aforesaid re-gasification service, they enter into LNG Terminal Commercial Operation and Re-gasification Agreement (hereinafter referred to as Agreement) with its Customers. M/s Shell submits following clauses of the Agreement:

"…

WHEREAS

A. Terminal Co owns and operates a liquefied natural gas re-gasification terminal at Hazira, District Surat, Gujarat, India;
B. User is interested in the re-gasification of LNG and to enable it to carry out such activities, the User desires that the Terminal Co . provides it with LTCOR Services (as defined hereinafter);
C. User intends to import one (l) Cargo of LNG at the Hazira (Surat) port; and
D. The Parties now wish to enter into this Agreement to set out the mutually agreed general terms and conditions for the provision of LTCOR Services to be provided by the Terminal Co to the User under this Agreement.

…

"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 more particularly described in this Agreement.

LTCORA Charges shall mean the fee payable by User to Terminal Co pursuant to this Agreement, and shall be calculated in accordance with Clause 14.

14.PAYMENTS AND PAYMENT SECURITY

14.1Payments by User

a) User shall pay Terminal Co the LTCORA Charges, any Deficiency Payment as applicable in accordance with this Clause 14 and Use or Pay Amount as applicable in accordance with Clause 6.3. The LTCORA Charges in respect of any Day shall be the product of the actual quantity of RLNG delivered at the relevant Delivery Point(s) and the LTCORA Tariff in respect of such Day.
b) The LTCORA Charges calculation in respect of a Billing Period shall be equal to the aggregate of the LTCORA Charges for each Day during a Billing Period…

…."

6. M/s Shell as consideration collects re-gasification charges from its Customers as per the terms mutually agreed between the parties to the agreement. The said re-gasification charges are computed by multiplying the actual quantity of RLNG delivered at the relevant delivery point(s) with the re-gasification tariff in respect of such day according to the Agreement.

<u>System Use Gas</u>

7. M/s Shell has submitted that the process of re-gasification also involves certain process losses. The said possible/potential losses during the process of re-gasification are understood by the parties as System Use Gas (SUG). The inherent loss of gas during the re-gasification process is also an internationally recognized concept. Thus, to mitigate the extent of loss, the parties

agree upon a percentage towards estimated losses during the process of re-gasification and the said understanding is duly captured in the Agreement executed for the provision of re-gasification services. That SUG is nothing but the loss of gas during various stages of re-gasification process. That such loss of gas may be attributed *inter alia* to the following reasons:

(xi) Inherent losses on account of the nature of LNG and RLNG.

(xii) Losses in the system during the process of unloading, storage and re-gasification of natural gas.

(xiii) Inaccuracies or uncertainties in the measurement of losses as well as natural gas in the system while undertaking the above processes.

8. M/s Shell has submitted that it is a well known fact that in the Oil and Gas industry where they are operating, there would be certain inherent unavoidable process losses. Thus, hedging Customers risk associated with potential losses (computed based on industry estimates) during the re-gasification process also plays a significant part in the business of M/s Shell and naturally so as any Customer would want that the extent of loss is pre-estimated as per the industry norms.

9. M/s Shell submits that as per the Agreement, SUG is computed as a percentage of the actual quantity of LNG discharged by a LNG carrier. That by agreeing a specified percentage of SUG, the Customers risk of any potential loss during re-gasification is capped at such agreed percentage of SUG. Further, considering the volatile nature of gas and the challenges associated with the measurement of losses, an upfront agreement of the percentage of SUG between M/s Shell and its Customers helps in eliminating any dispute regarding the quantity to be delivered under the Agreement. The relevant clause of the agreement dealing with SUG is as follows:

> *"*6.6 System Use Gas
>
> User shall provide to Terminal Co a quantity of system use gas equivalent to zero point six six percent (0.66%) of the actual discharged quantity of LNG by an LNG Carrier (SUG) towards the pre-estimate of process losses during LTCOR Services. Notwithstanding above, for whatsoever reason, User shall not be responsible for any quantity of System Use Gas in excess of zero point six six percent (0.66%) of the actual discharged quantity of LNG by an LNG Carrier."

10. M/s Shell has submitted that it is also pertinent to note that the quantity of gas to be allocated towards the SUG varies from Customer to Customer as the same is negotiated depending on multiple factors such as duration of the agreement, frequency of consignments, daily denomination quantity of the Customer, etc. Further, SUG does not have any impact on the re-gasification tariff charged from the Customers.

11. M/s Shell further submits that it is relevant to note that any efficiency or inefficiency (on account of uncertain events such as unplanned maintenance) leading to higher losses as compared to the stipulated percentage of SUG, would be borne solely by M/s Shell at its own cost.

12. The invoice for the re-gasification charges is issued to the Customer at the time of delivery of RLNG at respective delivery points. The re-gasification charges are computed by multiplying the agreed re-gasification tariff and the quantity of RLNG delivered to the Customer.

Current Model

13. M/s Shell submits that presently they are charging GST on the SUG by raising a separate invoice on the Customer. It is relevant to note that a separate invoice is issued and GST is being paid by M/s Shell only as an abundant caution under GST and the parties to the agreement agree that SUG is not a consideration for re-gasification service. That no amount whatsoever is being paid or collected towards the SUG in the present transaction. The relevant clause of the agreement with the Customer is as follows:

> "6.6 System Use Gas
>
> User shall provide to Terminal Co. a quantity of system use gas equivalent to zero point six six percent (0.66%) of the actual discharged quantity of LNG by an LNG Carrier ("System Use Gas" or "SUG") towards the pre-estimate of process losses during LTCOR Services. Notwithstanding above, for whatsoever reason, User shall not be responsible for any quantity of System Use Gas in excess of zero point six six percent (0.66%) of the actual discharged quantity of LNG by an LNG Carrier.

14. M/s Shell submits that even though according to the Parties, SUG is not a consideration, but purely as a matter of abundant caution, the Parties agree that the Terminal Co Shall invoice the GST on the value of SUG and User accepts to pay such invoices. For the limited purpose of computing the value of SUG, the User shall provide to Terminal Co, the price of LNG cargo in INR/MMBtu delivered to the Terminal Co for re-gasification not later than one (l) Business Day from the completion of cargo unloading for GST invoicing on SUG. Terminal Co shall raise an invoice towards GST on value of SUG quantities in respect of the LNG cargo received for re-gasification and User shall make payment to Terminal Co for such invoices within seven (7) Business Days from the date of receipt of the invoice…."

Sample invoices issued by M/s Shell on its Customers are enclosed as Exhibit B.

Proposed Model

15. M/s Shell submits that GST is not applicable on the SUG agreed with the Customer under the Re-gasification Agreement as the same is nothing but a process loss and cannot be dubbed as a consideration for the re-gasification activity.

16. M/s Shell proposes to issue an invoice only with respect to the consideration received for the re-gasification services, i.e. the re-gasification charges computed on the basis of RLNG delivered and not charge any GST on the SUG since the same does not qualify as consideration for the purpose of the GST Laws.

17. M/s Shell submits that the SUG decided as per the agreement with the Customer is not includible in the value of supply of re-gasification services as the same is in nature of losses and does not, in any manner qualify as consideration for the purpose of the Central Goods and Service Tax Act, 2017 (CGST Act)/ Gujarat Goods and Service Tax Act, 2017 (GGST) (since the provisions of the CGST Act and the GGST Act are identical, the provisions of CGST Act are referred herein for ease of reference and the same may be read along for the purposes of GGST Act wherever applicable), for re-gasification services provided by M/s Shell to the Customers. Consequently, no GST is payable on the SUG stipulated under the Agreement with the Customers. In this regard, M/s Shell makes the following submissions.

Valuation provisions under GST

18. M/s Shell has submitted that under the CGST Act, the levy of tax is on the event of supply, which is defined in Sec 7 of the Act. That the value of such supply is to be determined as per. Sec 15 of the CGST Act which provides that 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. The provision further deals with inclusions and exclusions from the value of supply. Section 15 of the CGST Act is read as under:

> *"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.*
>
> *…*
>
> *(3) The value of the supply shall not include any discount which is given,-*
>
> *(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

(b) after the supply has been effected, if,-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply…..

..

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed…."

18.1 That as per S. 15, the value of supply shall be the transaction value, which is the price paid for the supply *inter alia* where price is the sole consideration. In other cases, i.e. in cases where price is not the sole consideration, then, the value shall be determined as per the valuation provisions contained in Chapter IV (Rules 27-35) of the Central Good and Service Tax Rules, 2017 ("CGST Rules").

18.2 As per Rule 27 of the CGST Rules, where the consideration is not wholly in money, the value of the supply shall be the open market value of such supply, However, if the open market value is not available, the value shall be the sum total of monetary and value of non-monetary consideration, if such amount is known at the time of supply.

18.3 That further, if the value of supply is not determinable as per the open market value method or the sum total of consideration, the value of supply shall be the value of like supply. If the said method is also not applicable, the value shall be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of Rule 30 or Rule 31 (as discussed below), in that order. A summary of the valuation methods prescribed in Rule 27 of the CGST Rules is as follows:

SN	Rule	Method Prescribed
1.	27(a)	Open market value of supply
2.	27(b)	Sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply
3.	27(c)	Value of supply of goods or services or both of like kind and quality
4.	27(d)	Sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order. Rule 30- 110% of the cost of acquisition or cost of provision of such services. Rule 31- Reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter. In case of supply of services, the supplier may opt for this rule, ignoring rule 30.

19. M/s Shell submitted that the determining factor while ascertaining the value of supply is to ascertain whether SUG qualifies as non-monetary consideration for the supply of re-gasification service and thus, liable to be included in the value of supply.

20. M/s Shell submits that the concept of estimating losses in processing of natural gas is a recognised industry practice and is also an internationally recognised concept and thus, the SUG cannot be termed as consideration for the re-gasification service provided by M/s Shell to its Customers.

20.1 In this regard, M/s Shell cited a report on Losses of LNG during re-gasification at Hazira LNG Private Limited Terminal dated January 19, 2015, by M/s Ravi Energie Private Limited (part of Ravi Energie Group of Companies which is a ISO 9001 certified company and is registered with International Federation of Inspection Agency and other reputed international organizations). The conclusions drawn in the report are based on exhaustive testing of the measurement devices and inspection of the facilities at M/s Shell's Terminal. Further, agreements for provision of LNG re-gasification in the international markets have also been relied upon to arrive at the industry practice and standards. The findings of the report are as follows:

i. System use gas is understood to mean losses of the gas in the system. This could be due to flaring of the gas, leakages, maintenance, accidents, purging requirement, measuring errors at inlet and outlet of the terminal and other reasons. The losses could be due to either of or combination of these factors [*Definitions and abbreviations - page 4 of the report*]
ii. 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 [*Point 7.2 on page 9 of the report*]
iii. There is variation in the SUG expressed as a percentage of dispatched gas which is largely on account of factors such as load variation, capacity use, management of high load out, malfunctions and other operations [*Point 9 on page 13 of the report*]
iv. For M/s Shell's Terminal, the report determines a conservative statistical estimate of SUG losses to be 1.22 percent which is the sum of average of other losses of 0.19 percent and measurement uncertainties of 1.03 percent [*Point 6.6 on page 2 of the report*]
v. Industry practice is to have contracts based on a pre-agreed re-gasification loss percentage including measurement inaccuracies and uncertainties for arriving at the net deliverable quantity [*Point 4 on page 7 of the report*]
vi. It is observed that the contracted percentage of losses typically varies 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 [*Point 6.5 on page 2 of the report*]

A copy of the report is enclosed herewith as Exhibit-C.

21. M/s Shell cited a report on "International Practice for Reduction in Quantities Returnable by Terminal Operator under a Re-gasification Contract" dated February 19, 2016, by Poten and Partners (Australia) Pty Limited (A renowned international organization providing advisory services to energy industry). Key highlights of the report are as follows:

i. There is a de facto reduction between the energy delivered to an LNG terminal by the vessel and the energy returned by an LNG terminal. This reduction is due to inherent factors such as evaporation of the LNG transferred through and stored at an LNG terminal and gas used in operation of submerged combustion vaporizer (SCV).

ii. Losses occur at multiple places in an LNG terminal. For these reasons, it is not possible to accurately measure each loss and use of gas at an LNG terminal.

iii. Under agreements signed between LNG terminals and their Customers, retainage (SUG) is expressed as a percentage of quantities discharged, stored or re-gasified.

iv. Retainage (SUG) percentages are based on estimates of actual losses and quantity of gas used in SCV. Such losses vary based on the type of vaporization system used, the length of the cryogenic pipelines, the utilization rate at the terminal, any cooldown activities following maintenance, but also the level of accuracy of the measurement

v. Based on a benchmark of over 20 LNG terminals, retainage (SUG) percentage range from 0.2% to 2% of the discharged or sent-out quantities.

A copy of the report issued by Poten and Partners (Australia) Pty Limited is enclosed herewith as Exhibit-D.

22. M/s Shell submits that it can be discerned that allocation of gas towards loss is an internationally recognised concept for limiting the risk associated with process loss. That the gas allocated towards loss is not towards any specific service provided by the service provider. That the same does not partake the character of consideration in the hands of the service provider, at any time whatsoever.

23. M/s Shell has submitted that it is relevant to note the fact that SUG is an internationally recognised concept was also relied upon in the case of Petronet (supra) and was accepted by the Ld. Tribunal. Thus, the SUG stipulated in the Agreement between the parties in the present case does not qualify as consideration for the re-gasification services provided by M/s Shell to its Customers.

A. Process loss has been excluded from the value of supply by the Courts in the erstwhile regime

24. M/s Shell submits that the issue stands settled in favour of M/s Shell under the erstwhile regime, the Courts have affirmed the view that process loss pre-agreed by the parties does not form a part of the consideration/ the value of supply.

25. In this regard, M/s Shell has placed reliance on the decision of the Tribunal in the case of Petronet LNG Ltd. v. Pr. Commr. of ST, Delhi-I, 2019-VIL-659-CESTAT-DEL-ST, wherein the Tribunal, on similar facts, had held that SUG agreed between the parties does not constitute consideration for re-gasification services provided by the Appellant to its Customers. In this case, the Appellant was engaged in re-gasification of LNG owned by Customers. As per the agreements with the Customers, a certain percentage of LNG was made available to the Appellant by the Customers as allowed loss and consumption, which was understood to be gas lost/consumed in performing the re-gasification services. The Appellant discharged service tax on the amount received for re-gasification services. However, the Revenue sought to levy service tax on the value of such pre-fixed quantum of LNG identified towards allowed loss and consumption on the ground that LNG supplied by the Customers amounts to consideration received by the Appellant. While negating the stand of the Revenue, the Hon'ble Tribunal held as follows:

> *"24. Explanation (a) to sub-section (4) of section 67 of the Act defines "consideration" to include any amount that is payable for the taxable services provided or to be provided. Section 2(d) of the Contract Act also defines "consideration". It provides that when at the desire of the promisor, the promisee or any other person has done or abstained from doing anything or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promise. An amount will, therefore qualify as "consideration" if it has been agreed upon between the parties that such amount would be payable for the services provided. Thus, once it was agreed in the Agreement that the Appellant would receive a certain price for the services of re-gasification, it is this amount alone which would qualify as "consideration" for the services of re-gasification. The "allowed loss and consumption" would not represent a quid pro quo for the re-gasification services rendered by the Appellant. In fact, "allowed loss and consumption" is a stipulation contained in the Agreement between the parties to remit performance of the obligation of re-gasification in relation to the percentage of the LNG agreed upon as "allowed loss and consumption"...."*

26. The above decision was subsequently followed in the case of Petronet LNG Ltd. v. Pr. Commr. of ST, Delhi-I, 2021-VIL-118-CESTAT-DEL-ST.

27. That applying the ratio of the Tribunal's decision in the case of Petronet (supra), it can be clearly seen that SUG does not qualify as consideration for service and thus, the SUG agreed between M/s Shell and its Customers in the present case will not qualify as consideration for the purpose of the CGST Act.

28. M/s Shell has submitted that the Tribunal's decision in the case of Petronet (supra) is a favourable ruling under the pre-GST Laws holding that SUG does not qualify as consideration for re-gasification services. That GST Laws and Service Tax Laws are in pari-materia and the concept of SUG is also same under both the tax regimes and accordingly, considerable weightage should be given to the aforesaid decision while pronouncing the ruling in the instant case

29. M/s Shell cited case of M/s Hipolin Ltd. v. CCE Ahmedabad 2012 (26) S.T.R. 191 (Tri. - Ahmd.), the Tribunal held that keeping in view the process of manufacture, some process loss is inevitable and in the absence of any evidence to the contrary, the contention that the said shortage/damages relates to the process loss has to be accepted and accordingly, duty demanded on the process loss is unsustainable.

30. In Kirloskar Oil Engines Ltd. vs. Commissioner of Central Excise, Nashik 2017 (349) ELT 299 (Tri.-Bom), the appellant sent raw materials i.e. valve steel & steel round bars to M/s Advance Mechanical Works, Rajkot for job work. After processing, the appellant received material short to the tune of 16% due processing loss. A show cause notice was issued contending that the 16% loss is abnormal and thus the Department proposed to ley excise duty on such loss. The Tribunal *inter alia* held that 16% process loss is on the basis of assumption and presumption and without any evidence of diversion of input, cannot be subjected to tax.

31. In Commissioner of Central Excise, Belapur vs. Hydrogas PLG (I) Pvt. Ltd. 2006 (196) ELT 167 (Tri.-Bom), the issue was whether process losses in respect of liquid carbon dioxide gas received by the respondents from their sister unit in tankers, while being transferred to cylinders should result in denial of Modvat credit. The Tribunal held that keeping in view the peculiar nature of the commodity and process of manufacture and unavoidable and invisible loss, the denial of credit is unsustainable.

32. In the case of Hindustan Copper Limited v. Commissioner of Central Excise [2013 (290) E.L.T. 701 (Tri. - Mumbai)], the Hon'ble Tribunal acknowledged the fact that in every process some amount of loss is possible. Further, the court held that as long as the process losses are within the reasonable limits, they have to be permitted by the revenue.

33. In the case of Bee Kay Cements vs C.C.Ex, Lucknow [2005 (192) ELT 475 (Tribunal - Delhi)], the Tribunal held that the process loss incurred during the process of manufacture undertaken by the assessee is genuine and thus, is not taxable. Thus, the concept of process loss, which has been recognised by the Courts as an unavoidable loss and not as a consideration for any supply under the erstwhile regime, may be gainfully relied upon even in the present case. Accordingly, SUG cannot be considered as consideration for the regasification service provided by M/s Shell to its Customers.

The principle of judicial consistency must be followed by judicial and quasi-judicial authorities

34. M/s Shell submits it is a settled law that consistency is to be maintained in all the judicial proceedings. In this regard, reliance is placed on the decision of the Apex Court in the case of Commissioner of Income Tax vs. Excel Industries Ltd. 2014 (309) ELT 386 (S.C.).

35. In State of A.P. v. A.P. Jaiswal, (2001) 1 SCC 748 a three-Judge Bench of this Court observed that consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. With a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc.

36. M/s Shell further submits that since GST is still in its nascent stage, judgments rendered in the previous regime should be referred and relied upon for interpreting the GST Law provisions since the concepts under GST are similar in erstwhile laws.

37. M/s Shell submits that SUG cannot be considered as consideration for the re-gasification service provided by M/s Shell to its Customers.

38. M/s Shell submits that the SUG agreed between them and the Customers does not qualify as consideration for the re-gasification services provided by them and thus, the same does not form a part of the value of taxable supply in the present case.

39. M/s Shell further submits that before elaborating on the aspect of how SUG does not qualify as consideration, it analyses the provisions which govern the determination of consideration for the purposes of the CGST Act.

Consideration under the GST Laws

The term consideration is defined in S. 2(31) of the CGST Act as follows:

> *"(31). "consideration" in relation to the supply of goods or services or both includes,-*
>
> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
>
> *(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
>
> *Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*"

40. That from the above extracted definition, M/s Shell submits that it can be seen that the term consideration has been defined in a wide manner under the CGST Act to include monetary as well as non- monetary consideration. That above definition of consideration includes any payment, made or to be made, in respect of supply of goods or services or both by the recipient or by any other person. It also includes the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person.

41. In order to qualify as consideration, the payment should be:

> Monetary or non-monetary
>
> Received in respect of, in response to, or for the inducement of, the supply
>
> Made by the recipient or by any other person

Consideration should have nexus with supply

42. M/s Shell submits that one of the pre-conditions for any payment to be considered as "consideration" is that the same should be made for in respect of, in response to, or for the inducement of supply. That scope of definition of consideration extends only in relation to the supply of goods or services or both. In other words, only that payment that has nexus with the supply shall qualify as consideration under the GST laws.

42.1 M/s Shell submit that in E-Square Leisure Pvt. Ltd. 2019 (24) GSTL 125 (A.A.R. - GST), the Maharashtra Advance Ruling Authority explained the scope of the term "consideration" as follows:

> *"The definition of consideration is inclusive and the consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition it is clear that there should be a close nexus between the payment and supply and thus any payment/exchange/barter etc. would be treated as consideration for supply and liable to GST."*

42.2 Further it is submitted by M/s Shell that, it has been consistently held by the Courts that only the amount that has nexus with the activity can be taxed under the taxation laws. In the case *of Baroda Electric Meters Limited vs Collector of Central Excise [1997 (94) ELT 13 (SC)],* the Apex Court has held for the levy of tax, assessable value has to be linked to the taxable activity. As per the Court, any and every amount earned by the assessee would not be exigible to tax, but such amount has to be received in relation to the taxable activity performed.

42.3 Further it is submitted that considering that the European Union VAT Laws as similar to the GST Laws in India, M/s Shell relies upon the decisions rendered by the European Court of Justice to understand the meaning and scope of the term consideration.

42.4 In the decision of ECJ in Case No. 102/86 Apple and Pear Development Council, the Court determined that there must be a direct link between the supply made and the consideration received if there is to be consideration in the VAT sense. In this case, Apple and Pear Development Council was set up by the UK Government in 1966 to promote the apple and pear growing industry and it was funded by a compulsory levy on farmers. The Courts found that there was no direct link between the payments made by the farmers and the benefits they received because the benefits of the Council's work accrued to the industry as a whole. Similar position was laid down in Case 154/80.Staatssecretaris van Financiën.

42.5 Further, in Case C-16/93: Tolsma's case, ECJ noted that a supply of services is effected for consideration within the meaning of Article 2 (1) of the Sixth Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance. In the present case, there is no performance of service by M/s Shell to the extent of RLNG lost during re-gasification process i.e. SUG

42.6 In Vodafone Portugal — Comunicações Pessoais SA v Autoridade Tributária e Aduaneira C-43/19, the ECJ observed that a supply of services is carried out for consideration only if there is a legal relationship between the service provider and the recipient and the

remuneration received by the service provider constitutes the consideration for an identifiable service supplied to the recipient.

42.7 M/s Shell also relies upon the decision of the Apex Court in the case of Union of India vs. Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) GSTL 401 (S.C.) wherein the Apex Court held that the value of taxable service shall be the gross amount charged by the service provider for such service and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro quo for rendering such a service.

42.8 M/s Shell submits that it is a settled law that in order to qualify as a consideration for supply, the said consideration should have a nexus with the said supply of goods or service or both.

43. M/s Shell submits that the SUG does not qualify as consideration for the re-gasification services provided by M/s Shell to its Customers since the same is not in respect of, in response to, or for the inducement of supply. In other words, the SUG has no nexus with the services provided inasmuch as the SUG is stipulated **i**n the contract between the parties to limit the risk associated with process loss and is not agreed as a consideration for the re-gasification service.

44. M/s Shell submits nature of the product dealt with in the present case:

i. Natural gas is a naturally occurring hydrocarbon gas mixture consisting primarily of methane. Methane being highly flammable, makes the gas reactive if exposed with air (oxygen).

ii. For transportation of natural gas over long distances, natural gas is condensed into a liquid state at close to atmospheric pressure by cooling down the gas to very low temperatures (minus 160 degrees).

iii. Condensation of natural gas from gaseous to liquid state reduces the volume of gas by 600 times.

iv. Upon receipt of LNG at the destination port, natural gas in liquid state is again converted into gaseous state using vaporizers.

v. Typically, natural gas is measured by volume and is stated in cubic meter/ feet. However, due to varying composition (quality) it is a standard practice to measure it in terms of energy.

vi. The energy contents of the gas are measured in terms of British Thermal Units (BTU). The energy content (high or low heating value) of volume of natural gas varies with the composition of the natural gas (percentage composition of methane and other gases) and thus, is dependent on the quality of gas when burned

vii. Measurement of natural gas in energy terms is dependent on various factors such as its composition, density, gross calorific value, temperature, etc. Accordingly, any change in one of the components will vary the energy quotient of the same quantity of gas measured earlier.

45. M/s Shell submits that the process of re-gasification is not limited to vaporization of the natural gas in liquid state, but encompasses in its scope other ancillary and incidental activities of unloading of the LNG from the carrier, storage of the LNG and delivery to the Customer at the

delivery point. That the entire process of conversion of natural gas from liquid to gaseous state involves natural gas being lost at multiple stages during the entire process of re-gasification. That, for this purpose, M/s Shell and the Customers prescribe the SUG limit during the time of the contract to estimate the gas loss during the re-gasification process.

46. M/s Shell submits that the potential areas where the loss of natural gas occurs during the process of re-gasification, as follows:

i. Inherent losses in operations related to natural gas (given its natural form and properties) including transportation of the same, This is also generally acknowledged and accepted by the customs authorities which is evident from the fact that customs duty payable on the import of LNG into India is assessed on the actual quantity of LNG unloaded from the vessel as against the quantity appearing in the bill of lading. The difference between two quantities (actual vs bill of lading) is on account of inherent losses associated with LNG which is duly taken into account while assessment of customs duty on actual quantity unloaded. This practice has also been upheld by the Hon'ble Supreme Court in the case of Mangalore Refineries and Petrochemicals Limited vs Commissioner of Customs, Mangalore [TS-724-SC-2015], wherein it was held that customs duty should be assessed on the actual quantity unloaded on the shores of India and not the bill of lading quantity and due regard has to be given to the loss of goods during transportation.

ii. During unloading of the LNG from LNG carrier, Terminal tank pressure increases due to vaporization of unloaded LNG. Pressure in the tanks is managed through Boil off Gas compressors and supply of Boil off Gas to LNG carrier tanks. In case of receipt of LNG from a carrier with higher liquid temperature or tank pressure, Terminal tank pressure rises sharply and the gas is vented out automatically to control tank pressure. Such gas flared in the atmosphere is gas lost.

iii. For the unloading of LNG from the LNG carriers to the storage tanks at the Terminal, unloading arms are connected to the discharge point on the vessel. It may be noted that the connectors at discharge point on the vessel as well as the unloading arms are made of specialized metal. At the time of disconnecting the unloading arm from the vessel, due to the friction between the metal surfaces, there is high risk of ignition. Considering the flammability of natural gas present in the unloading arms at that moment or any leakages that may happen during unloading, any such ignitors could lead to a fire hazard. In order to purge the flammability of natural gas, nitrogen gas is used in the unloading arms and reduce the chances of fire hazards. Such quantity of natural gas mixed with nitrogen is subsequently disbursed in the atmosphere and thus, such quantity of natural gas is lost.

iv. The process of re-gasification of LNG at the Terminal is a continuous process and thus, natural gas (in liquid and gaseous state) is present in the pipelines running to the

re-condensers, HP pumps, vaporizers and other associated machinery at all times. In the event of any technical failure or breakdown, safety procedures prescribed requires isolating and removing the particular portion of the equipment or machinery which is not functioning. This process is also undertaken during planned maintenance of re-gasification equipment installed at the Terminal. During this process, the LNG present in that portion of the equipment has to be vented out for safety reasons. Such gas is either flared in the atmosphere or directly released in the atmosphere in case flaring of the same is not feasible. Such gas released in case breakdown or failure of the equipment is gas lost. Having discussed the above, it can be observed that during the re-gasification process, the component of SUG is attributable to technical failure/ breakdown or planned maintenance of re-gasification equipment. However, a major portion of SUG is attributable to the pre-re-gasification processes i.e. losses during receipt of LNG from the carriers till storing of imported LNG in cryogenic tanks. Accordingly, applying the ratio of Hon'ble Supreme Court's decision in case of Mangalore Refineries (supra), value attributable to SUG should not be included in the value of re-gasification services for the purpose of computation of GST since, it is not in lieu of the re-gasification activity *per se.*

v. The measurement of LNG is a highly volatile process as the same is dependent on multiple variables. Hence, the measurement of LNG at multiple stages during the process of unloading from LNG carriers and storage in cryogenic tanks may not be completely accurate and certain. The meters installed at various metering locations, used for measurement of LNG are prone to inaccuracies due to technical limitations in the measurement of LNG. It is relevant to note that even though the meter installed at the Terminal are state of the art and based on the most efficient and accurate technology present in the re-gasification industry, even the latest technology has not been successful in providing 100 percent accurate results. As a result, there are always uncertainties and inaccuracies in measurement of LNG done during the process of re-gasification.

47. M/s Shell has submitted that the existence of the potential process losses is also recognized by the OISD (Oil Industry Safety Directorate) Standard 194, Edition 2016, issued by the Government of India, Ministry of Petroleum and Natural Gas, on the safety and design aspects of all the major components of an LNG receiving terminal facility including unloading, storage and re-gasification of LNG. Some aspects emerging from this report are:

Calorific/ energy values of LNG are provided in a range due to uncertainty of LNG measurement

Leaks and spills of LNG are inherent in the product and its handling

Relief mechanisms in the form of flare/ release of gas to atmosphere are necessary

48. Thus, during the entire process of re-gasification, M/s Shell submits that gas is lost at various stages, as elucidated above. That in order to limit the risk of gas lost during the process of re-gasification, M/s Shell and its Customers have mutually contracted for a specified percentage of gas towards potential losses in the process of re-gasification i.e. SUG.

49. M/s Shell has submitted that SUG in the present case is nothing but an estimate of gas lost during the process and is not in the nature of consideration in relation to the re-gasification service provided by M/s Shell to the Customers since there is no nexus with the service provided by M/s Shell. That SUG is the potential process loss that is estimated by the parties to limit the risk of gas loss and is not decided as a consideration for the re-gasification service provided by M/s Shell to the Customers.

50. The natural gas mentioned in the Agreement between M/s Shell and the Customers as SUG is not quid pro quo for the re-gasification services rendered but is agreed, based on the industry estimates of potential loss of LNG during re-gasification process, with an intent to cover the possible losses during the process of re-gasification of LNG.

51. M/s Shell submits it is the fundamental principle of Contract law that the consideration for a contract should always be at the desire of promisor, otherwise it ceases to be a consideration. In the present case, M/s Shell does not desire SUG unlike re-gasification charges, as consideration for provision of re-gasification services. That, at the cost of repetition, M/s Shell has submitted that SUG only represents the inevitable process loss during various stages of re-gasification activity. Reliance in this regard is placed upon the Larger Bench decision of CST v. Repco Home Finance 2020-TIOL-1039-CESTAT-MAD-LB Ltd. wherein this principle of law was reiterated that consideration should be at the desire of promisor, otherwise it fails to be a consideration.

52. In view of the above, the SUG cannot be considered as consideration under the CGST Act.

53. M/s Shell submits that as per the settled jurisprudence under the Contract Act, consideration must act as an inducement for the promisor to enter into the contract and abide by the promise made to the promisee. In other words, it must act as a stimulus for the promisor to enter into the promise and abide by the same. This has also been included in the GST laws since as per the CGST Act, consideration includes any payment in money or otherwise whether by the recipient or any other person for inducement of supply.

54. M/s Shell submit that they and the Customers have negotiated and mutually agreed a fixed per unit charge to be paid for the services of re-gasification rendered under the Service Agreement. The parties have arrived at the re-gasification tariff in such a manner so that it acts as a motive for M/s Shell to enter into the Agreement and render the re-gasification services. That SUG does not form a part of the consideration since regardless of the SUG, the re-gasification tariff remains the same, which is motive for M/s Shell. That the change in

percentage of SUG does not influence the consideration agreed for the provision of re-gasification services.

55. M/s Shell submitted that the contracting parties have mutually consented only on the re-gasification charges as the consideration under the Service Agreement and accordingly, SUG is not in the nature of consideration decided between the parties for inducement of the supply of services.

56. M/s Shell submits that in terms of the settled jurisprudence under the tax laws of India, tax can be levied only on the consideration agreed between the parties under a commercial contract. In the present transaction, from the terms of the Agreement between M/s Shell and the Customers, it can be seen that the parties have agreed to treat only the re-gasification charges related to the RLNG delivered as consideration for the re-gasification service. In other words, the SUG stipulated in the agreement is not regarded as a part of the consideration for the service provided by M/s Shell. The relevant clause of the Agreement is as follows:

> *"…*
>
> "LTCORA Charges" shall mean the fee payable by User to Terminal Co pursuant to this Agreement, and shall be calculated in accordance with Clause 14.
>
> …
>
> 6.6…..
>
> Even though according to the Parties, SUG is not a consideration, but purely as a matter of abundant caution, the Parties agree that the Terminal Co Shall invoice the GST on the value of SUG and User accepts to pay such invoices. For the limited purpose of computing the value of SUG, the User shall provide to Terminal Co, the price of LNG cargo in INR/MMBtu delivered to the Terminal Co for re-gasification not later than one (l) Business Day from the completion of cargo unloading for GST invoicing on SUG. Terminal Co shall raise an invoice towards GST on value of SUG quantities in respect of the LNG cargo received for re-gasification and User shall make payment to Terminal Co for such invoices within seven (7) Business Days from the date of receipt of the invoice.
>
> ….
>
> 14.1 Payments by User
>
> User shall pay Terminal Co the LTCORA Charges, any Deficiency Payment as applicable in accordance with this Clause 14 and Use or Pay Amount as applicable in accordance with Clause 6.3. The LTCORA Charges in respect of any Day shall be the product of the actual quantity of RLNG delivered at the relevant Delivery Point(s) and the LTCORA Tariff in respect of such Day…"

57. In this regard, M/s Shell placed reliance on the decision of the Apex Court in the case of Moriroku UT India (P) Ltd vs State Of U.P [2008 (224) ELT 365 (SC)], wherein the Hon'ble Supreme Court has affirmed the aforesaid principle that tax can be levied only on the contractual consideration.

58. M/s Shell submit that it is settled that for something to qualify as consideration, the parties to the contract must intend to treat the same as consideration mutually and the Department has to give effect to the term of the contract between the parties. Reliance in this regard is placed on a decision of a three-judge bench of the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Motor & General Stores Pvt. Ltd. (1967) 66 ITR 692 (SC) wherein it was declared that the tax department cannot discard the clear terms of the agreement between the parties to determine the purported intent.

59. M/s Shell submits that in the present case, the consideration for re-gasification services has been identified in the agreement as re-gasification tariff, the quantum of which has been mutually agreed between the contracting parties. Further, both the parties, i.e. M/s Shell and the Customers have accepted the possibility of losses during the process of re-gasification of LNG to RLNG and the challenges faced in the measurement of the product i.e. natural gas. With this understanding, both the parties have mutually set aside a pre-defined portion of the gas to account for such losses incurred during the re-gasification process and term the same as SUG. The percentage of SUG mentioned in the agreement is negotiated with the intention to assign the risk associated with the losses in the process of re-gasification. Thus, there is a consensus i.e. meeting of minds amongst the parties to the agreement to treat the SUG as merely allocation of allowed loss and to treat only the re-gasification tariff as consideration for the service.

60. That in the instant case, the intention of the parties while deciding the quantum of SUG is not to consider the same as an economic benefit arising to M/s Shell but to account for the losses incurred in the process of re-gasification.

61. M/s Shell further submits that as per Section 10 of the Contract Act, an agreement becomes a contract and enforceable by law only when the same has been entered into by the parties with a free will and consent. Further, as per Section 13 of the Contract Act, two or more persons are said to be in consent when they agree upon the same thing in the same sense. This concept has been derived or based upon the legal principle of consensus ad idem i.e. meeting of minds, mutual assent or mutual agreement.

61.1 That infact, in the case of Petronet (supra), the Ld. Tribunal, after an analysis of the contractual stipulations concluded that when allowed loss and consumption is a condition of the contract; the same cannot be treated as a consideration for the contract entered into between the Appellant and the customer.

62. M/s Shell in view of the above, submitted that SUG stipulated in the Agreement between the Customers and M/s Shell does not qualify as consideration and thus, the same is not liable to be included on the value of taxable supply in the present case.

SUG does not have any effect on the consideration of service

63. M/s Shell submits that it is also pertinent to note that the SUG does not have any impact on the value charged for re-gasification services and as such cannot be treated as additional consideration. Reliance in this regard is placed on Godavari Power and Ispat Ltd. v. CCE Raipur

2017 (6) G.S.T.L. 48 (T) wherein the Appellant was paying service tax on crushing charges for crushing of iron ores. In the process, iron ore fines emerged which was sold by the Appellant. The Department wanted to treat the value of iron ore fines as additional consideration for crushing services. In this regard, it was held that value of iron ore fines is not additional consideration as the contingency of emergence of iron ore fines having some value, is not determinable at the time of fixing of crushing charges. Relevant part of the decision is extracted below:

> *"The ground loss also is pre-fixed. Now, at the time of issue of work order neither party is aware of the exact quantum of loss or possible accrual of iron ore fines for the appellant. In other words, the contingency of emergence of iron ore fines having some value, is not determinable at the time of fixing of crushing charges. Hence, it is not tenable to hold that the crushing charges are influenced by the possible emergence of iron ore fines and its additional value to the appellant."*

63.1 The aforesaid decision has also been affirmed by the Apex Court and reported at Commissioner v. Godawari Power & Ispat Ltd. - 2018 (10) G.S.T.L. J168 (S.C.).

64. M/s Shell submits that in the instant case, the SUG is agreed only as an estimation of loss of gas in the process of re-gasification. Actual losses may be higher or lower than the estimate of process loss i.e. SUG.

65. M/s Shell submits that the re-gasification tariffs which is the sole consideration agreed with the Customer under the Service Agreement are completely unaffected from the SUG component. In this context, M/s Shell would like to place reliance on the decision of the Apex Court in the case of Commissioner of Central Excise, Mumbai-III vs. I.S.P.L. Industries Ltd. 2003 (154) ELT 3 (S.C.) wherein the Court held that when price is not influenced by the fact of interest free advance made by the buyer to the manufacturer, notional interest not includible to the assessable value of the goods.

66. That in the case of Murli Realtors Pvt. Ltd. vs. Commissioner of Central Excise, Pune-III 2015 (37) STR 618 (Tri.-Bom), the Tribunal held that in the absence of evidence to show that the security deposit taken has influenced the price i.e. the rent, and thus, in the absence of such evidence, it is not possible to conclude that the notional interest on the security deposit would form part of the rent.

67. M/s Shell submits that while the re-gasification tariffs for all the Customers are largely at par with each other, the percentage of SUG negotiated with each Customer differs. The change in percentage of SUG substantiates the fact that the same has not influenced the consideration agreed for the provision of re-gasification services, but is dependent on multiple factors such as period of agreement, frequency of consignments, daily denomination quantity of the Customer, extent of hedging of risk of loss, etc. The SUG cannot be regarded as non-monetary consideration for re-gasification service provided by M/s Shell to its Customers. Sub-section 4 of

Section 15 of the CGST Act is not applicable in the present case. Consequently, the application of valuations rules provided in the CGST Rules does not arise.

68. M/s Shell submits that in the instant case, the SUG does not qualify as non-monetary consideration and thus, the rules relating to valuation contained in the CGST Rules are not applicable in the instant case.

69. It is submitted that as per Section 2(31) of the CGST Act, consideration can be monetary and non-monetary and in case there is non-monetary consideration involved in a transaction, then, the value of supply is to be determined as per Section 15 read with Rule 27 of the CGST Rules.

70. M/s Shell submits that it is relevant to note that the term non-monetary consideration is not defined in the GST Laws. Non- monetary consideration essentially means consideration in kind. The Australian Tax Authorities in Ruling GSTR 2001/6 held that a payment is not limited to a payment of money and it includes a payment in a non-monetary or in an in kind form, such as:

providing goods;
granting a right or performing a service (an act); and
entering into an obligation, for example to refrain from selling a particular product (a forbearance).

71. That consideration for supply can also be in kind. However, it is relevant to note that non-monetary consideration should also meet the requirements of consideration, viz, the same should be nexus with the supply, the consideration should be for the inducement of supply and there should be consensus ad idem to treat it as consideration by the parties to the contract.

72. M/s Shell submits that in the instant case, SUG is stipulated in the Agreement towards process loss and not as a consideration for the supply of re-gasification service. The provision of gas as SUG towards possible losses in the re-gasification process is a practice followed by the entire re-gasification industry both internationally as well as domestically. Further, in the terms of the Agreement also sufficiently clarify that SUG is allocated only towards process loss and not as a consideration for any service.

73. M/s Shell submits that since the requirements of consideration are not fulfilled in the present case, SUG cannot be treated as non-monetary consideration and therefore, the valuation rules contained in the CGST Rules have no applicability in determining the value of re-gasification service the present case.

B. Value of SUG is not includible as per S. 15(2) of the CGST Act

74. M/s Shell submitted that Section 15(2) of the CGST Act deals with the inclusions in the value of supply under the GST Laws. That as per Section 15(2), the value of supply shall include:

i. Taxes, duties, cesses, fees and charges levied under any law for the time being in force other GST, charged separately by the supplier.

ii. 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.

iii. 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.

iv. Interest or late fee or penalty for delayed payment of any consideration for any supply.

v. Subsidies directly linked to the price excluding subsidies provided by the Central/State Government.

75. M/s Shell submitted that in the instant case, the SUG is not covered under Section 15(2) of the CGST Act and is thus not liable to be included in the value of supply since:

i. SUG is not in the nature of taxes, duties, cesses, fees and charges levied under any law.

ii. SUG is not an amount that is incurred by the recipient of the supply. SUG is an estimated percentage of potential losses in the re-gasification process including inaccuracies or uncertainties in the measurement of losses as well as natural gas in the system and is not any amount that is incurred by the Customer for M/s Shell.

iii. SUG is not an incidental expense charged by M/s Shell to the Customer. SUG is an estimated amount of loss incurred in the entire process of re-gasification and is not a separate expense charged to the Customer.

iv. SUG is not in the nature of interest or late fee or penalty for delayed payment of any consideration for any supply.

v. SUG is not a subsidy.

76. That SUG is not liable to be included in the value of supply of the re-gasification service provided by M/s Shell to the Customers.

77. M/s Shell submits that SUG agreed between it and the Customers does not qualify as consideration under the CGST Act and thus, the same is not liable to be included in the value of supply of re-gasification services by M/s Shell to the Customers.

Question on which Advance Ruling sought

78. Whether value attributable to SUG stipulated in the Agreement between the Applicant and Customers is subject to the levy of GST and therefore, liable to be included in the consideration for re-gasification services determined as per Section15 of the CGST Act?

Personal Hearing

79. Personal hearing granted on 18-2-22 was attended by Ms. Priyanka Rathi, Advocate and Shri Abhishek Nolkha and they reiterated the submissions. On enquiry regarding the levy of Service Tax on said SUG during pre- GST era, Ms. Rathi informed that a Show Cause Notice was issued on the identical issue in Service Tax proposing to demand Service Tax on SUG gas and that M/s Shell availed SVLDRS by paying the service tax computed amount as per the scheme in respect of the said Show Cause Notice. Further, as required by us, vide email dated 19-2-2022, submitted the copy of SCN dated 29-9-15 vide F.No. DGCEI/AZU/36-26/2015-16 issued by the Additional Director General, DGCEI proposing to demand service tax of Rs. 46,45,29,236/- for the period July-2010 to Sept-2014 along with applicable interest and penalties.

Revenue's submission:

80. Revenue has neither submitted its comments on the Advance Ruling Application nor appeared for hearing.

Discussion & Findings:

81. We have carefully considered all the submissions made by M/s Shell. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in 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 would also mean reference to the corresponding similar provisions in the GGST Act.

82. We note that M/s Shell re-gasifies the LNG belonging to its customers. And that its customers have the following terms of payment laid down in the contract, as follows:

i. An amount equal to 'Re-gasification Tariff multiplied with actual quantity of RLNG delivered at delivery points' to be paid by customers to M/s Shell

ii. **Customers shall provide to M/s Shell a quantity of System use gas (SUG) equivalent to 0.66% of actual discharged quantity of LNG by a LNG carrier**. We note that this quantity of SUG in the contract, is translated in this business practice by way of M/s Shell raising Invoices having, inter alia, an item of description 'SUG' in its invoices. We have examined the invoices raised by M/s Shell on M/s GAIL (India) Pvt. Ltd. and M/s GSPCL, wherein SUG quantity of 0.66% of discharged quantity of LNG at its receipt point was multiplied with re-gasification tariff to arrive at SUG value.

83. **The issue before us hinges whether this SUG value invoiced by M/s Shell on its customers is leviable to GST**. At the outset, we note that M/s Shell is charging this SUG amount on its customers vide GST Tax invoices. What is before us is whether this GST invoiced amount on its customers is part of transaction value for re-gasification service supply.

84. We note that in GST law, as per Section 17(5)(h) CGST Act, ITC is blocked for goods lost. However, we cannot ascertain, by cross referencing with M/s Shells customers if the

goods(SUG) as cited by M/s Shell are lost as process loss; since LNG being non GST item, the customers(who are the principal) cannot avail ITC under the GST scheme of law on its LNG in toto, therefore reversal of ITC on process loss concept does not arise at all in this case and thereby the checks and balances framed in GST scheme of law for process loss cannot be verified in this case.

85. Though this is not the matter before us, we do note that as Shells customers are not paying the value portion on the SUG invoices, but paying only the tax amounts, the customers cannot avail ITC on the tax portion reflected in the Shell's SUG invoices as per 2nd Provisio to Section 16(2) CGST Act, its customers have not paid the value portion of SUG invoices.

86. We have read the contract entered by M/s Shell with M/s GAIL (India) Pvt. Ltd. for re-gasification of its customers LNG. When inquired for the practise of M/s Shell in pre- GST era and whether service tax was paid on the value received for System use gas , M/s Shell submitted that in this regard in service tax era, a Show cause Notice was issued by the Department on M/s Shell (formerly known as LNG Hazira LNG Pvt. Ltd.) for service tax liability on 'SUG value' and later submitted a copy of the show cause notice. We have read the said Show cause notice dated 29-9-15 vide FNo DGCEI/AZU/36-26/2015-16 issued by Additional Director General, DGCEI (Directorate General of Central Excise Intelligence) for service tax leviabilty on SUG value proposing demand of Rs. 46,45,29,236/- for the period July-10 to Sept-2014, along with interest and invoking certain penalty provisions. When inquired from Central Revenue regarding the status of said SCN, it was informed by Revenue vide letter dated 16-3-22 that the said applicant settled the said SCN dated 29-9-15 vide SVLDR Scheme. Now SVLDR scheme provides that when a main notice of a Show cause notice pays the Tax amount proposed in SCN as per the provision of SVLDRS, the noticee gets total waiver of interest and waiver of penalty, immunity from prosecution, and once the main noticee discharges the service tax demand, even the co –noticees are accorded the benefits of the SVLDR Scheme. We also note that a declaration under the said scheme will not be a basis for assuming that the declarant has admitted the position and no fresh show cause notice will be issued merely on that basis.

87. We note that M/s Shell paid tax amount, as per SVLDRS terms of payment, with reference to the said SCN dated 29-9-15 proposing service tax demand of Rs. 46,45,29,236/- This SCN covered the period July 2010 to September 2014.

88. Central Revenue vide letter dated 12-4-22 informed that two more Show cause Notices, SCN dated 11-4-17 and SCN dated 9-1-19 on identical issue of Service Tax liability on SUG value for the period Oct-14 to Sept- 2015 and Oct-2015 to June-2017 respectively was issued on M/s Shell (formerly M/s Hazira LNG Pvt. Ltd.). Thereby, we note that there are two more SCNs issued by Central Revenue to M/s Shell proposing demand of service tax on 'SUG value', one SCN dated 11-4-17 covering the period October 2014 to September 2015 demanding Service Tax of Rs 13,46,38,242/- (Rupees Thirteen Crores Forty Six Lacs Thirty Eight Thousand Two Hundred Forty Two Only.) and another SCN dated 9-1-19 covering the period October 2015 to June 2017 demanding service tax of Rs 15,15,73,213/- (Rupees Fifteen Crores Fifteen Lacs

Seventy Three Thousand Two Hundred Thirteen Only.). Central Revenue intimated that M/s Shell further paid service tax amount for tax proposed in both the later two SCNs as per provision of SVLDRS.

89. We note that from the period July 2010 to June 2017, a total Service Tax demand of Rs. 75,07,40,691/- (Rupees Seventy Five Crores Seven Lacs Forty Thousand Six Hundred Ninty One Only.) was made on M/s Shell on SUG value vide said 3 SCNs and that M/s Shell paid the SVLDRS computed amounts and thereby availed the benefit of SVLDRS, such as waiver of interest and penalty and immunity from prosecution.

90. Further, we agree with M/s Shell submission at paragraph 28 to the extent that the concept of SUG is same under both the tax regimes of Service Tax and GST.

91. On careful study of M/s Shell's submissions, We find that M/s Shell has submitted that the subject Gas (termed by M/s Shell as SUG) is consumed/ used by it for the following purposes,:

i. Gas is used for controlling the Terminal Tank pressure, by way of gas being vented out automatically by flaring in the atmosphere. During unloading of the LNG from LNG carrier, Terminal tank pressure increases due to vaporization of unloaded LNG. Pressure in the tanks is managed through Boil off Gas compressors and supply of Boil off Gas to LNG carrier tanks. In case of receipt of LNG from a carrier with higher liquid temperature or tank pressure, Terminal tank pressure rises sharply and the gas is vented out automatically to control tank pressure. The first overpressure protection to the LNG storage tanks is given through flaring.

ii. Gas is used by M/s Shell in operation of submerged combustion vaporizer (SCV) wherein water of the tank is directly heated from a submerged combustion burner which uses natural gas for its operation.

iii. Gas is used in the planned maintenance of the Plant.

With this submission of M/s Shell, We note that SUG prima facie cannot be ruled as process loss but prima facie a case is made before us, by the very submissions of M/s Shell that said gas is used in the Plant for the smooth flow of Regasification Service Supply. The scope of Regasification Service Supply is enumerated in paragraph 2.

92. Further we note that M/s Shell vide its submission admitted Gas measurement uncertainties and submitted that there are always uncertainties and inaccuracies in measurement of LNG done during the process of re-gasification. M/s Shell submitted that Measurement of natural gas in energy terms is dependent on various factors such as its composition, density, gross calorific value, temperature, etc. Accordingly, any change in one of the components will vary the energy quotient of the same quantity of gas measured earlier. It was submitted that the measurement of LNG is a highly volatile process as the same is dependent on multiple variables and that the measurement of LNG at multiple stages during the process of unloading from LNG carriers and storage in cryogenic tanks may not be completely accurate and certain. The meters installed at

various metering locations, used for measurement of LNG are prone to inaccuracies due to technical limitations in the measurement of LNG.

We find that measurement uncertainties may not be positive only but also in negative which would then mean that M/s Shell has retained certain portion of gas of its customers.

93. There is a prima facie view, established from submission of M/s Shell that this SUG amount has a nexus with the Re-gasification Service supply. We reiterate that we agree with M/s Shells submission at paragraph 28 that SUG concept in Service tax era and GST era is identical. We noted the three SCNs issued to M/s Shell for service tax taxability on SUG. Exercising the provisions of Section 105 of the CGST Act, We hold that the Statement of M/s Shells conversant personnel recorded under section 14 Central Excise Act to investigate the taxability on SUG has its bearings on the issue at hand before us. We further hold that Statements recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 by the Revenue are admissible in the Court of law.

We are of strong opinion that the recordings of M/s Shell (formerly known as Hazira LNG Pvt. Ltd.) personnel namely Shri Sanjay Kshatriya, Terminal Manager And Shri Nitin Shukla, Managing Director are relevant to this subject matter, as the issue pertains to 'concept of SUG'; We place on record of this Ruling the following facts:

i. M/s Shell re-gasifies its own LNG

ii. Also, M/s Shell also re-gasifies LNG belonging to its customers.
The re-gasification services covers the services related to re-gasification of LNG into RLNG on behalf of M/s Shells customers including allied, incidental and ancillary services such as receipt of LNG Carriers at the Port, unloading of LNG from LNG carriers and receipt by Shell of such LNG at the receipt point, temporary storage of LNG in storage tanks and delivery of RLNG.

iii. For re-gasification, besides the LNG required as input, certain portion of LNG is pre-requisite and consumed/utilised by M/s Shell for the following activities:

A. <u>A portion of Gas is used during the regasification process, as follows</u>:

I. Gas is used **to run the Gas Turbine Generator**(s) (GTGs) which operates as contingency along with power grid. The power/ electricity generated from GTG is used to run re-gasification plant, utility and other facilities at terminal. Therefore Shell, in case of non availability of power from the grid uses one or more GTG's as per requirement in the plant to run the plant, utility and other facilities at terminal. We note that system use gas is used to run GTGs.

II. Gas is used **to run the Submerged Combustion Vaporiser (SCV)** on burner mode in case of non availability of ORV (Open Rack Vaporisers), for the purpose of vaporisation. So to run SCV during contingencies, gas is used.

III. **During cooling of BOG** (Boil off Gas) compressor before each LNG cargo, gas is vent out to flare.

IV. In storage tank there are incidences wherein there were automatic gas release to flare **to manage tank pressure**.

We find the gas used, as at I to IV, for operation of the Re-gasification Equipment/ plant/ utility/ other facilities at Terminal. And in case had this gas been purchased by M/s Shell from the market, then for financial accounting it would have expensed it in its Expense accounts and allocation it in cost of provision of re-gasification service and thereby then the said cost component of gas used would be allocated as part of M/s Shell's cost of provision of re-gasification service.

B. Further we find that a portion of quantity of gas is needed during re-gasification process in the following:

I. In cases of shutdown/ breakdown/ power failure, RLNG is lost from piping equipment in the process of draining, purging, cool down **because of safety reason by venting;**

II. During unloading gas is used on account of unloading arms purging and warming, so gas is vent out into the atmosphere without flare.

III. Further, Gas is required and used both for planned maintenance of the system and also for ' repair and maintenance' of the system.

We find that this system use gas, in this para B, is requisite for the specified safety measure and for maintenance as specified and had M/s Shell purchased this gas used for these procedures then it would have added this the cost of purchase into cost of provision of re-gasification service.

C. 'System Use Gas' Measurement Inaccuracies.

We note that Inaccuracies in measurement of gas may lead not only to losses but even gains, and it can't be predetermined. Therefore, the Quantum of M/s Shell's said System use gas percentage cannot be a fixed quantity or a fixed percentage. **Shri Sanjay Kshatriya in his statement recorded under section 14 Central excise Act, stated (as reflected in page 11 of cited SCN dated 29-9-15 this Relied upon document is available with M/s Shell) that gas lost/ gained, in measurements, cannot be determined in isolation and no separate records for individual losses are maintained. Further, that use of gas depends on contingencies and cannot be ascertained and fixed at various stages; and that Shell maintains records of LNG/ RLNG used to run GTG and SCV but no separate records for individual losses are maintained. Further, no separate records of Total gas used as fuel by Shell's LNG re-gasified and Shells customers LNG re-gasified is maintained.**

Further, the uncertainty in gas measurement loss can be both negative as well as positive. What is inferred for Negative losses is that there is gain in the stock of Gas or that M/s Shell retained this quantity of gas itself. Further, as per the Monthly energy Reports, the unaccounted consumption of gas, which falls under the category of SUG, by Shell from

July 2010- 2014, 45 months out of 48, the uncertainty was negative meaning there was gain in stock in 45 months out of 48.

D. The Monthly Energy Reports maintained at the terminal is the total energy stock record maintained monthly at the terminal and no separate records are maintained by Shell for re-gasification of its own LNG and that of LNG belonging to its customers, therefore fuel gas, flared gas ratios are for both its LNG and customers LNG activities. This Monthly energy report, inter alia, details the LNG receipt, Gas used as fuel which is <u>total fuel gas (which comprises RLNG used as fuel to run GTG, SCV and Pilot burner of flare),</u> flare gas, total consumption, fuel gas consumption for SCV.

What is clear from the Contract's clause 6.6, cited by M/s Shell at para 56 is that Shells customers provide a quantity of system use gas equivalent to 0.66% of discharged LNG quantity by LNG carrier. In practice, Shell delivers RLNG at delivery point to its customers charges re-gasification charges as per re-gasification tariff on the delivered quantity of RLNG from its customers. Further as per cited contract's clause 6.6, its customers have agreed to provide M/s Shell an agreed quantity of gas terming the same as 'System Use Gas'. We find that this gas is used for the said purposes discussed at A, B of this para.

94. In conspectus of facts on record, we hold that this system use gas is- (a) used by M/s Shell as fuel for re-gasification plant (b) retained as its gain (c) used for flaring which is an incidental expensing for the re-gasification procedure and falls within the scope of costs incurred for re-gasification service.

For this, we hold that amount of SUG value charged on its customers vide GST invoices does fall under the cost of provision of service of Re-gasification and thereby an indispensable component of taxable value of re-gasification service supply by M/s Shell.

95. We find this gas charge which is used by M/s Shell is cost on re-gasification services, to be precise it is an **expenses incurred by M/s Shell for the Re-gasification scope of service to be supplied to its customers and as M/s Shell is not purchasing gas from market but made an agreement with customer for a SUG quantity to be provided to customers for the subject service supply, we find this SUG quantity to be provided by its customers is now translated into SUG value by M/s Shell invoices raised on its customers.**

96. Thus we find that the phrase 'system use gas', has satisfied its plain meaning as it is a gas used for in said system for the Re-gasification service supply and thereby M/s Shells invoice reflecting the SUG value is a part and parcel of the Re-gasification service supply charges. It is on record that SUG has nexus with this re-gasification service supply and is a cost, both direct and also incidental & ancillary to the scope of re-gasification services.

96.1 The taxable supply value, as per Section 15 of CGST Act, 2017 reads as follows:

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****;*

96.2 We find that the contractual liability of M/s Shell to procure System use gas to be used to run GTG/ SCV; gas used during unloading; gas used during storage for maintaining pressure by venting out as discussed at para 93 (A); gas to be used for flaring; gas to be used in maintenance and gas retained with M/s Shell when there is SUG reflected as gains in the measurement as discussed at Para 93 (C) of this Ruling and this the costing of SUG is borne by its customers. This amount is charged by M/s Shell on its customers vide GST invoices which reflect an item of invoicing as SUG value. The Contract entered by M/s Shell with its customers reads that Terminal Co shall raise an invoice towards GST on value of SUG quantities in respect of the LNG cargo received for re-gasification and User shall make payment to Terminal Co for such invoices. We note that consideration includes any payment in money or otherwise whether by the recipient or any other person for inducement of supply. We cannot brush aside the fact that said SUG is the Gas used/ needed by M/s Shell for ensuring its re-gasification service supply to its customers.

97. We note that M/s Shell discharged the service tax liabilities on the SUG value in terms of the SVLDRS scheme, vide the cited three Show cause notices discussed at para 86 to 89 and that the facts of the case raised in SCNs and the issue before us is identical but for nature of indirect tax, then service tax in SCNs (an indirect tax) and now GST(an indirect tax) before us.

98. We note that M/s Shell has cited case laws pertaining to Process loss. Now, it is on record that Gas, in our present case, has neither evaporated but that it is used for certain activities, either for running the re-gasification equipment or used for safety procedures by venting; and used for maintenance procedures. Further, SUG may also be retained free of cost in cases where

uncertainties in measurement is negative as discussed at para 93 (C). Thus the case laws cited by M/s Shell are different in its facts. When we read the agreement of Shell with its customers, the way the agreement was drafted gives an impression that its process loss and thereby We hold that facts of consumption/ utlisation of Gas in subject supply has been covered up; however with facts We brought on record vide our discussion, the true picture of gas being used has been brought to light regarding the nature of system use gas and its nexus with supply of re-gasification service(which has a wide scope and not limited to just re-gasification of LNG into RLNG as detailed at paragraph 2). Thus it is on record that the SUG value has direct nexus with the scope of re-gasification service supply by M/s Shell and falls within the definition of consideration for the said supply. Further, in the present case, there is a GST invoice raised by M/s Shell on its customers for SUG value and payment of GST has been made by its customers.

99. We note that the literal meaning of the phrase ' System Use Gas' has been justified as the gas has been used by system. Now the scope of re-gasification services covers not just re-gasification but an entire gamut of activities from unloading LNG from the Ships, its storage, its re-gasification along with safety measures and thereafter the delivery to the customers. We find that system use gas charges raised on its customers vide GST Tax Invoices are part and parcel of Re-gasification service supply. We hold that the scope of re-gasification service supply cannot be dissected to favour only a portion of invoice charged on its customers as taxable by misreading re-gasification service to mean only re-gasification of LNG into RLNG. This runs contrary to the scope of re-gasification service detailed at para 2.

100. In conspectus of the aforementioned Discussion and findings, we pass the Ruling:

RULING

1. The scope of Re-gasification Services covers not only the services related to re-gasification 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 para2
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 Re-gasification 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.

(**ATUL MEHTA**)
MEMBER (S)

(**ARUN RICHARD**)
MEMBER (C)

Place: Ahmedabad
Date: 11.05.2022