Reserved
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Case :- SALES/TRADE TAX REVISION No. - 9 of 2017

Applicant :- M/S Bhushan Steel Limited
Opposite Party :- The Commissioner, Commercial Taxes
Counsel for Applicant :- Rahul Agarwal
Counsel for Opposite Party :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

1. Whether 'Regasified Liquefied Natural Gas' i.e. 'RLNG', sold to revisionist by Gas Authority of India Ltd. i.e. 'GAIL' is 'Compressed Natural Gas (CNG)', so as to oust it from the purview of taxing Entry 8(a) of Schedule IV of Uttar Pradesh Value Added Tax Act, 2008, (hereinafter referred to as 'Act') is the question for consideration in this revision. 'RLNG' is a Natural Gas and its name is derived with its flow from M/s Ras Laffan Liquefied Natural Gas Company Limited at Doha, Qatar, the source company from which it is procured by 'GAIL'.

2. Revisionist is a public limited company incorporated under The Companies Act, 1956. It manufactures C.R. Coils/Strips, G.P. Coils/Strips and G.C. Sheets at its industrial unit located at Industrial Area, Sahibabad, Ghaziabad. For energising its plant, revisionist uses 'RLNG', after purchasing it from GAIL, pursuant to a Gas Sale Agreement, executed from time to time. One such agreement dated 20th February, 2013 is on record.

3. Natural Gas supplied to the revisionist by GAIL is imported. The process followed for the purpose, as detailed in this petition, is as under:-

> (i) Natural Gas is first liquefied at the place of origin i.e. Dahej in Qatar and termed as Liquefied Natural Gas (LNG).
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> (ii) LNG is then transported in shipping tankers to India.
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> (iii) LNG is re-gasified at Liquifaction Terminals near port of import, and such re-gasified 'LNG' is called 'RLNG'.
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> (iv) RLNG is compressed at Compression Stations at/near the port of import for its transportation through pipelines; intermediate compressing stations are setup along the pipeline

maintained for compression of natural gas for its transportation.

(v) RLNG, a natural gas, is then supplied to revisionist at the pressure specified in the Gas Supply Agreement. Such natural gas is used for generation of electricity consumed for manufacturing different species of iron and steel at the industrial plant of revisionist.

4. The Gas Supply Agreement defines various terms used in the agreement. Some of such terms, relevant for our purposes, are extracted hereinafter:-

"(i) "**Bar**" is defined to mean absolute pressure of 1.01972 kilograms per square centimeter or 14.504 pound per square inch.

(ii) "**Delivery Point**" is defined as the point at the flange connecting the Gas Transporter's Facilities to the Buyer's facility, which in the present case, is the factory gate of the Revisionist.

(iii) **Clause 2.1** defines the agreement, i.e. "Seller agrees to sell and tender for delivery at the Delivery Point, and Buyer agrees to purchase, receive and take at the Delivery Point and pay for the gas in the quantities at the times and the prices determined in accordance with and subject to the terms and conditions of the Agreement."

(iv) **Clause 2.3** stipulates that the transfer of title in the goods will pass from the seller to the buyer at the delivery point.

(v) **Clause 9.1** defines the agreement between the parties that the gas supplied by GAIL to the revisionist would not be less than 3 bars, i.e. it is much above the atmospheric pressure.

(vi) Appendix 5 stipulates that the Gas Transporter's Facilities include:

- Compressor stations at suitable locations to transport the gas as well as meet the contractual requirements of the consumers and

- Consumer terminals including pressure reduction, metering facilities, chromatograph etc. for supply of gas to consumers. (v.p. 196)"

5. According to the revisionist, 'RLNG' supplied to it by GAIL is natural gas in compressed form i.e. above 03 bars, and as such is Compressed Natural Gas (CNG). Natural Gas is not in compressed state only when it remains at normal atmospheric pressure which is 01 bar. Supply of gas to the revisionist between 05 to 07 bars i.e. in compressed state, therefore, is not in dispute.

6. Tribunal has held that 'RLNG' is not Compressed Natural Gas (CNG), and is thus taxable under Entry 8(a) of Schedule IV to the Act. 'Natural Gas' as a taxing entry at commencement of the Act was Entry 10 to the Schedule IV. This entry was substituted, vide notification dated 10.1.2008, w.e.f. 1.1.2008, as under:-

> *"10 (a) Natural gas other than Compressed Natural Gas (CNG) when sold to registered dealer for use in the process of manufacture of any taxable goods against the certificate prescribed by the Commissioner;*
>
> *10(b) Natural gas other than Compressed Natural Gas (CNG) in cases other than those described in Serial No.10(a)."*

The entry was again amended and categorized distinctively vide notification dated 4th March, 2008, w.e.f. 1.1.2008. Schedule IV was amended vide notification dated 29.9.2008, with retrospective effect, and Entry 10 became Entry 8. The substituted entry reads as under:-

Sl. No.	Name & description of goods	Point of tax	Rate of tax
1	2	3	4
8(a)	**Natural Gas** when sold to an industrial unit of a registered dealer for use in the process of manufacture of taxable goods other than non-vat goods against Certificate prescribed by the Commissioner.	M or 1	5%
8(b)	**Natural Gas** when sold to registered dealer for use in the process of manufacture by an industrial unit situated in Taj Trapezium Area against Certificate prescribed by the Commissioner.	M or 1	5%
8(c)	**Natural Gas** in cases other than those described in Serial no.8(a) & 8(b).	M or 1	21%

With effect from 4.3.2008 aforesaid notification was again amended to re-classify items in following terms, which subsists, and falls for consideration:-

Sl. No.	Name & description of goods	Point of tax	Rate of tax

1	2	3	4
8(a)	Natural Gas other than compressed Natural Gas (CNG) when sold to an industrial unit of a registered dealer for use in the process of manufacture of taxable goods other than non-vat goods against Certificate prescribed by the Commissioner.	M or 1	5%
8(b)	Natural Gas other than compressed Natural Gas (CNG) when sold to registered dealer for use in the process of manufacture by an industrial unit situated in Taj Trapezium Area against Certificate prescribed by the Commissioner.	M or 1	5%
8(c)	Natural Gas other than compressed Natural Gas (CNG) in cases other than those described in Serial no.8(a) & 8(b).	M or 1	21%

7. Entry 8(a) is presently invoked and is the subject matter of consideration. The department treated 'RLNG' supplied to the revisionist as Natural Gas other than Compressed Natural Gas (CNG), so as to bring it within Entry 8(a), on which tax at the rate of 5% was payable. The assessee also treated it as natural gas other than compressed natural gas, and uptill October, 2014, such gas was purchased against Form-D by paying Vat @ 5%. Subsequently, however a claim was raised by the assessee contending that by virtue of amended notification, since Compressed Natural Gas (CNG) was excluded from the definition of natural gas, and it was not defined/specified elsewhere, as such it ought to be treated as unclassified product, so as to fall within Schedule V, and taxed @ 12.5% or as natural gas other than Compressed Natural Gas to be taxed @ 21% by virtue of Entry 8(c). The assessee claimed input tax credit, accordingly, on purchase of 'RLNG'. The assessing authority, however, rejected such claim and reversed input tax credit under Section 14 of the Act of 2008, in proceedings undertaken for different periods from 2011-2012 to October, 2014. The assessee preferred a first appeal. The appellate authority remanded the matter to the assessing authority to determine question as to whether the gas supplied by GAIL to revisionist is Natural

Gas other than Compressed Natural Gas (CNG), or is it 'Compressed Natural Gas (CNG)'. The first appellate authority also directed to verify from Gas Authority of India Ltd. the purpose and nature of gas supplied by it to the revisionist. Being aggrieved, the assessee preferred a second appeal before the Tribunal. Gas Authority of India Ltd. was also impleaded as a party to ascertain the nature of gas supplied by it. GAIL has submitted its stand supporting the revenue, which is on record. Tribunal has concurred with the view taken by the assessing authority and rejected assessee's second appeal.

8. Tribunal noticed that 'Compressed Natural Gas (CNG)' is not defined in the Act. 'Compressed Natural Gas or CNG' however is defined in the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as the 'Act of 2006'), under section 2(l) to mean natural gas used as fuel for vehicles, typically compressed to the pressure ranging from 200 to 250 bars in the gaseous state. Tribunal relied upon the definition given in 2006 Act while rejecting revisionist's contention that gas supplied to it is Compressed Natural Gas (CNG). Reliance upon the opinion of experts furnished for the purpose, according to which 'RLNG' supplied by GAIL to revisionist is natural gas supplied at 06 bars i.e. above atmospheric pressure of 01 bar and thus is natural gas in compressed form has also not been accepted.

9. After examining the respective stand of the parties, the tribunal has come to a conclusion that Compressed Natural Gas (CNG) is distinct and separate product which is used in automobiles sector, and is usually supplied at 200 to 250 bars, which was not found to be the case here. After noticing the definition of CNG given in the Act of 2006 and after taking into consideration various factors pressed before it on behalf of rival parties, found that RLNG supplied to revisionist is not Compressed Natural Gas (CNG). Reliance was placed upon the fact that revisionist itself had claimed 'RLNG' to be covered by Entry 8(a). The tribunal has resorted to common parlance test so as to affirm the order passed by the assessing authority. Thus aggrieved, assessee is before this Court in the present revision filed under Section 58 of the Act.

10. Learned counsel for the revisionist contends that natural gas when is compressed above atmospheric pressure, it would have to be classified as Compressed Natural Gas (CNG) and no other interpretation could be pressed. Submission is that the authorities as well as the tribunal have completely misconstrued the entry, with reference to the agreement and other materials brought on record before it. Relying upon the decision of the Apex Court in State of West Bengal Vs. Kesoram Industries [2004 (10) SCC 201], it is contended that taxing statutes have to be strictly construed. The subject is not to be taxed without clear words for the purpose and that the taxing statute has to be read according to the natural construction of its words. Something, which is not mentioned, cannot be read, nor implied, and there is no presumption to tax. Submission advanced with reference to the aforesaid decision is that if words are ambiguous and open to two interpretations, the benefit is liable to be given to the subject. Learned counsel has also relied upon the judgments of the Apex Court in Polestar Electronics (P) Ltd. Vs. Additional Commissioner [1978 (1) SCC 636]; Assessing Authority-Cum-Excise and Taxation Officer, Gurgaon and another Vs. East India Cotton Mfg. Co. Ltd., Faridabad [1981 (3) SCC 531]; Mathuram Agrawal Vs. State of M.P. [1999 (8) SCC 667]; Kalyan Roller Flour Mills Pvt. Ltd. Vs. Commissioner of Commercial Taxes, A.P. [2014 (16) SCC 375]; Hansraj & Sons Vs. State of J & K [2002 (6) SCC 227], and Padma Sundra Rao (dead) and others Vs. State of T.N. and others [2002 (3) SCC 533].

11. Reliance is also placed upon the components, which exist in the concept of tax, so as to submit that if any of the component is missing then tax would not be leviable. The legislative history is also pressed, so as to contend that entire natural gas was subsequently reclassified, so as to exclude compressed natural gas, which is a generic name given to all kinds of gases that are in compressed form. It is also argued that while interpreting an entry in a taxing statute, the provisions given in other enactments cannot be relied upon. The revisionist further contends that common parlance test has wrongly been relied upon by the tribunal in the facts of the present case, and that the concept itself has no applicability, in view of

the observations made by the Apex Court in Gujarat State Fertilizers Company Vs. Collector of Central Excise [1997 (4) SCC 140]. The submission is that the tribunal has erred in relying upon the definition given in Act of 2006, so as to hold 'RLNG' as not being Compressed Natural Gas (CNG) so as to reverse the input tax credit.

12. Learned Standing Counsel appearing for the revisionist has supported the order for the reasons recorded therein. It is contended that 'RLNG' supplied to revisionist is not Compressed Natural Gas (CNG) and as it is Natural Gas supplied to an industrial unit of registered dealer manufacturing taxable goods, the product is liable to be taxed @ 5%. It is also stated that in common parlance Compressed Natural Gas (CNG) is understood as CNG supplied to automobile sector and the revisionist also understood it in the same manner in the past. It is contended that placing of reliance upon the definition of product in the Act of 2006 is not illegal inasmuch as the enactment is a Special Act framed by the Parliament to deal with natural gas and for the purposes of ascertaining true meaning of the expression Compressed Natural Gas (CNG) in the taxing entry it could always be referred to. Submission is that entry is clear inasmuch as it is only that component of natural gas is excluded which constitute Compressed Natural Gas (CNG). Reliance is placed upon number of decisions in that regard, which shall be dealt with later.

13. I have heard Sri S.P. Gupta and Sri Dhruv Agrawal, Senior Advocates, assisted by Sri Rahul Agrawal, for the revisionist and Sri B.K. Pandey, learned Standing Counsel for the revenue and have also perused the materials brought on record.

14. The product to be taxed vide Entry 8(a) is natural gas, other than Compressed Natural Gas (CNG), when sold to an industrial unit of a registered dealer, for use in the process of manufacture of taxable goods other than non-vat goods against certificate prescribed by the Commissioner. The taxing entry not only defines the product but also sufficiently deals with its user and use. The entry for its better understanding can be split in the following parts; (i) natural gas; (ii) other than Compressed Natural Gas (CNG); (iii) sold to an industrial unit of a

registered dealer; (iv) for use in the process of manufacture of taxable goods other than non-vat goods against certificate prescribed by the Commissioner. The first two parts i.e. Natural Gas and other than Compressed Natural Gas (CNG) defines the nature of product to be taxed, whereas part III deals with its user whereas part IV provides for its use. All four parts of the taxing entry have to be assigned meaning to ascertain its proper construction. User and use i.e. Part III and IV of the entry do not create much difficulty inasmuch as it specifies that the product is to be sold to an industrial unit of a registered dealer and that it must be used in the process of manufacture of taxable goods other than non-vat goods against certificate prescribed by the Commissioner. Applicability of these two parts, in this case, is not in doubt. Part I and II thus needs consideration.

15. The product sold to revisionist is natural gas other than Compressed Natural Gas (CNG). There is no issue between the parties on the proposition that 'RLNG' is a natural gas. This leaves us with the other part i.e. natural gas must be other than Compressed Natural Gas (CNG).

16. Revisionist contends that natural gas remains in uncompressed form only at atmospheric pressure which is 01 bar. It is admitted that natural gas has to be compressed for carrying it from one place to another. Compression, therefore, has to be applied for natural gas to be transported by pipeline from one place to another. It is also admitted that 'RLNG' is supplied to the revisionist by GAIL at a pressure between 5 to 7 bars, which is in compressed state. Contention is that being in compressed state the natural gas as a product purchased by revisionist is Compressed Natural Gas (CNG). Opinion of experts have also been brought on record in that regard, which may be taken note of. Sri Ambrish Mishra, Advisor, Petroleum Sector, BSI India, in his report annexed as Annexure-9 has opined as under:-

> "In any case weather contractually or factually, after re-gasification and compression and till the supply of gas by GAIL to Bhushan Steel, natural gas is not changing its physical state and remains in compressed state.

> Conclusion: The RLNG supplied by GAIL to Bhushan Steel Ghaziabad is at a pressure of about 6 bar thus is in compressed state i.e. above atmospheric pressure (about 1 bar).”

Opinion of Sri Bhalchandra Shingan has also been brought on record as Annexure -10, which reads as under:-

> “9.1 (b) The seller shall maintain, at the delivery point, pressure not less than 3 bar (the delivery pressure)”
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> Therefore this delivery pressure being above the atmospheric pressure (1.0325 bar), the RLNG supplied to Bhushan Steel Ltd is in compressed form and can be classified as Compressed Natural Gas (CNG).
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> This opinion is true to the best of my knowledge, and has been issued at the request of M/s Bhushan Steel Ltd.”

Opinion of Dr. I. M. Mishra, Professor, Indian Institute of Technology, Roorkee has also been brought as Annexure -11 and reads as under:-

> “Based on the careful reading of the Gas Sale Agreement between GAIL and BSL, the physical inspection of the “Tap off and Receiving Termination” at the premises of BSL, from where GAIL supplies gas to BSL, and the records of the “Quarterly Joint (GAIL and BSL) checking of Custody Transfer Instrument” of different quarters of the year, it is found that the
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> (i) The RLNG gas being supplied by GAIL to BSL is under pressure/compression, and
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> (ii) The RLNG being received by BSL from GAIL at the “Tap off and Receiving Terminal” at BSL may be called as natural gas in compressed form.”

17. The reports of the experts are also to the effect that 'RLNG' supplied by GAIL to the revisionist is natural gas at a pressure above atmospheric pressure (1.0325 bar) and could be characterized as Compressed Natural Gas. The argument of learned counsel for the revisionist as also the opinion of experts clearly supports the proposition that 'RLNG' supplied to the revisionist is natural gas in compressed form.

This characterization is with reference to technical attribute of the product. It is based upon scientific analysis and defines product in its technical sense. Law is however settled that while defining a taxing entry the words are not to be

interpreted in its technical sense, but has to be understood in its popular sense. In Porritts and Spencers (Asia) Ltd. vs. State of Haryana [1979 (1) SCC 82], while dealing with an entry of taxing statute not defined in the Act, the Apex Court has been pleased to observe as under in para 3 and 4:-

> "3. Now, the word "textiles" is not defined in the Act, but it is well settled as a result of several decisions of this Court, of which we may mention only a few, namely, Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola [AIR 1961 SC 1325 : (1962) 1 SCR 279 : (1961) 12 STC 286] and Motipur Jamindary Co. (P) Ltd. v. State of Bihar [AIR 1962 SC 660 : 1962 Supp 1 SCR 498 : (1962) 13 STC 1] and State of West Bengal v. Washi Ahmed [(1977) 2 SCC 246 : 1977 SCC (Tax) 278 : (1977) 3 SCR 149] that in a taxing statute words of every day use must be construed not in their scientific or technical sense but as understood in common parlance. The question which arose in Ramavatar case was whether betel leaves are vegetables and this Court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. State of Madhya Pradesh [7 STC 99, 102 (Nag HC)].
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> "In our opinion, the words 'vegetables' cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term 'vegetables' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table."
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> and observed that the word "vegetables" in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. This meaning of the word "vegetables" was reiterated in Motipur Jamindary case where sugarcane was held not to fall within the definition of the word "vegetables" and the same meaning was given to the word "vegetables" in Washi Ahmed case where green ginger was held to be "vegetables" within the meaning of that word as used in common parlance.
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> 4. It was pointed out by this Court in Washi Ahmed case that the same principle of construction in relation to words used in a taxing statute has also been adopted in English, Canadian and American Courts. Pollock B. pointed out in Gretfell v.I.R.C [(1876) 1 Ex D 242, 248] that
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> "if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular

> sense, meaning, of course, by the words 'popular sense' that which people conversant with the subject-matter with which the statute is dealing would attribute it."
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> So also the Supreme Court of Canada said in Planters Nut and Chocolate Co. Ltd. v. King [(1951) 1 DLR 385] while interpreting the words "fruits" and 'vegetables' in the Excise Act. "They are ordinary words in every day use and are, therefore, to be construed according to their popular sense". The same rule was expressed in slightly different language by Story, J., in 200 Chests of Tea[(1824) 9 Wheaton (US) 430, 438] where the learned Judge said that:
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> "the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the Legislature does 'not suppose our merchants to be naturalists, or geologists, or, botanists'." (emphasis supplied by me)

18. It is the use of term in common parlance which would be relevant. The trade or a commercial meaning or the end user test would be relevant while interpreting a taxing entry. [*See: Mauri Yeast India Company Ltd. vs. State of U.P., 2008 (5) SCC 680]*. It can safely be presumed that when notification was issued by the State, specifying the taxing entry, a distinct kind of natural gas was intended to be excluded from natural gas. The scientific or technical attribute of the product may have relevance for academic purposes, but for the taxing statute the exclusionary part of the natural gas would have to be construed as a distinct entity understood in its popular sense or common parlance. A definite identifiable product is to be excluded. In case Natural Gas in compressed form is to be treated as Compressed Natural Gas (CNG) then almost all category of Natural Gas which is capable of being transported (because only in compressed form Natural Gas could be transported) would get covered. What is intended to be excluded from Natural Gas thus is a particular variant of Natural Gas, in compressed form, which is identified as Compressed Natural Gas (CNG) in the trade or industry and is understood and used as such.

Moreover, exclusionary part i.e. Compressed Natural Gas (CNG) used in the taxing entry is in two parts i.e. Compressed Natural Gas (CNG). Use of expression CNG in parentheses cannot be ignored. Compressed Natural Gas is

used in conjunction with CNG and both have to be taken into consideration while interpreting the exclusionary part used to describe the product. It is, therefore, Compressed Natural Gas understood in its popular sense as 'CNG' which is the benchmark instead of scientific or technical attribute of product as is sought to be explained by the revisionist.

19. Learned counsel for the revisionist has placed reliance upon a decision of the Apex Court in Gujarat State Fertilizers Co. vs. Collector of Central Excise [1997 (4) SCC 140] to contend that where there is an express reference in the notification about description of goods then common parlance test cannot be applied. Para 15 of the said judgment, relied upon, reads as under:-

> "15. Shri Bhat, for the Revenue, next contended that the term "fertiliser" as employed by the notification must be given its ordinary meaning that is accepted in common parlance. He submitted that to a common man fertiliser would denote only a soil fertiliser which could be utilised by the agriculturist for improving his agricultural yield. It is difficult to appreciate this contention. As noted earlier, the notification in terms seeks to encompass in its coverage goods of the description falling under Chapters 25, 27, 28, 29 and 31 or 32 of the Tariff Act. When there is an express reference in the notification covering the goods, amongst others, those referred to in Chapter 31 and as Chapter 31 in its turn includes chemical fertilisers, it is difficult to appreciate how despite such an express reference in the notification, the supposed common parlance test can be adopted. In fact, such was not the contention of the department even before the CEGAT or for that matter before the Assistant Collector or the Collector (Appeals). The only stand of the department was that Exemption Notification No. 40 of 1985 would not apply to ammonia as it had resulted in the final product melamine which was not a fertiliser and the intermediate product of molten urea was utilised in a continuous process of manufacture and, therefore, it must be held that ammonia was captively consumed for the purpose of manufacturing the ultimate product of melamine and not molten urea. On the express language of the notifications, in question, it is not possible to agree with the contention of Shri Bhat, learned Additional Solicitor General that the term "fertiliser" employed by the said notification must be understood by adopting the common parlance test to be referring to soil fertiliser only."

Learned counsel has also urged that since entry in the notification is sufficiently clear as such common parlance test cannot be pressed. This

submission, however, cannot be accepted. Judgment in Gujarat State Fertilizers Co. (supra) dealt with an exemption notification. Parameters to interpret an exemption notification are well settled inasmuch as it has to be strictly construed and all conditions contained in the notification are to be met. In Eveready Industries India Ltd. vs. State of Karnataka [2016 (12) SCC 551] following observations have been made by the Apex Court in para 15 to 17:-

> "15. It is trite that exemption notifications require strict interpretation. In order to get benefit of any exemption notification, the assessee has to satisfy that it fulfils all the conditions contained in the notification. This is so held by this Court in Rajasthan Spg. & Wvg. Mills Ltd. v. CCE [Rajasthan Spg. & Wvg. Mills Ltd. v. CCE, (1995) 4 SCC 473] , wherein this principle was stated in the following manner: (SCC p. 478, para 16)
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> "16. Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since, it is a case of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification."
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> 16. In Novopan India Ltd. v. CCE and Customs [Novopan India Ltd. v. CCE and Customs, 1994 Supp (3) SCC 606] , this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. CCE and Customs [Hansraj Gordhandas v.CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] held that: (Novopan India Ltd. case [Novopan India Ltd. v.CCE and Customs, 1994 Supp (3) SCC 606] , SCC p. 614, para 16)
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> "16.… such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption." (Hansraj Gordhandas case [Hansraj Gordhandas v.CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , AIR pp. 758-59, para 5)
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> 17. It is a different matter that once the conditions contained in

> the exemption notification are satisfied and the assessee gets covered by the exemption notification, for the purpose of giving benefit notification has to be construed liberally. However, in the present case, the appellant has not been able to cross the threshold and to find entry under the Notification dated 31-3-1993 for the reasons mentioned above. Therefore, we have no option but to hold that the appellant was not entitled to exemption from entry tax."

20. It is the common parlance test which is of vital significance in a fiscal statute for interpreting a taxing entry where it is not defined. The exclusionary part i.e. Compressed Natural Gas (CNG) has not been defined in the notification and other parts of the entry which deals with the subject or its use would not be helpful in interpreting the exclusionary part. The common parlance test therefore would be the reliable and safe guide to understand import of the exclusionary part used in the entry. In Atul Glass Pvt. Ltd. vs. Collector of Central Excise [1986 (3) SCC 480], while elucidating common parlance test the Apex Court observed as under in para 8:-

> "8. The test commonly applied to such cases is: How is the product identified by the class or section of people dealing with or using the product? That is a test which is attracted whenever the statute does not contain any definition. *Porritts and Spencer* (*Asia*) *Ltd.* v. *State of Haryana* [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : AIR 1979 SC 300 : (1978) 42 STC 433] . It is generally by its functional character that a product is so identified. In *CST, U.P.* v. *Macneill & Barry Ltd., Kanpur* [(1986) 1 SCC 23 : 1986 SCC (Tax) 155] this Court expressed the view that ammonia paper and ferro paper, used for obtaining prints and sketches of site plans could not be described as paper as that word was used in common parlance. On the same basis the Orissa High Court held in *State of Orissa* v. *Gestetner Duplicators* (*P*) *Ltd.* [(1974) 33 STC 333 (Ori)] that stencil paper could not be classified as paper for the purposes of the Orissa Sales Tax Act. It is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind. In the case of a glass mirror, the consumer recalls primarily the reflective function of the article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only because the word glass is descriptive of the

> mirror in that glass has been used as a medium for manufacturing the mirror. The basic or fundamental character of the article lies in its being a mirror. It was observed by this Court in *Delhi Cloth and General Mills Co. Ltd.* v. *State of Rajasthan* [(1980) 4 SCC 71 : 1980 SCC (Tax) 548 : AIR 1980 SC 1552 : (1980) 3 SCR 1109] which was a case under the sales tax law: (SCC pp. 75-76, para 7)
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> "... In determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted."
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> That was also the view expressed in *Geep Flashlight Industries Ltd.* v. *Union of India* [(1985) 22 ELT 3] . Where the goods are not marketable that principle of construction is not attracted: *Indian Aluminium Cables Ltd.* v. *Union of India* [(1985) 3 SCC 284 : 1985 SCC (Tax) 383] . The question whether thermometers, lactometers, syringes, eyewash glasses and measuring glasses could be described as "glassware" for the purpose of the Orissa Sales Tax Act, 1947 was answered by the Orissa High Court in *State of Orissa* v *Janta Medical Stores* [(1976) 37 STC 33 (Ori)] in the negative. To the same effect is the decision of this Court in *Indo International Industries* v. *CST, Uttar Pradesh* [(1981) 2 SCC 528 : 1981 SCC (Tax) 130 : AIR 1981 SC 1079 : (1981) 3 SCR 294] where hypodermic clinical syringes were regarded as falling more accurately under the entry relating to "hospital equipment and apparatus" rather than under the entry which related to "glasswares" in the UP Sales Tax Act."

21. What is meant by Compressed Natural Gas (CNG), in common parlance, is then the next issue that needs examination.

22. Learned Standing Counsel has invited attention of the Court to the fact that revisionist itself treated 'RLNG' to be natural gas other than Compressed Natural Gas and paid 5% tax upon the product upto October, 2014. It is sought to be suggested that there cannot be an issue raised by the revisionist once it itself understands the product 'RLNG' to be natural gas other than Compressed Natural Gas (CNG). The factual statement in that regard is not in issue. It is admitted that revisionist had for substantially long treated the product to be natural gas other than Compressed Natural Gas (CNG). Learned counsel for the revisionist,

however, submits that the mere fact that it wrongly understood the product or that wrongly used certificate issued by the Commissioner would not go against the assessee. Reliance for the purpose is placed upon a decision of the Apex Court in Commissioner of Sales Tax vs. Leather Facts Co. [1987 AIR 1343]. Para 2 of the judgment relied upon reads as under:-

> "It is no doubt true that Form III-A under Rule 12-A of the U.P. Sales Tax Act is not an appropriate form to use in the context of such a transaction of last sale or purchase for the purpose of complying with an agreement or order for export which has already come into existence. However, it is equally true that an appropriate form to meet the situation in relation to such last sales which are not exigible to sales/ purchase tax under the U.P. Sales Tax Act having regard to the constitutional bar and having regard to the provision contained in sub-section (3) of Section 5 of the Act has not been devised under the aforesaid Rules. It was under these circumstances that the respondent has furnished to his vendors form III-A which is not appropriate except in regard to purchases made for sales of undressed hides as such within the State or in the course of inter-State trade. But the mere fact that such a form has been given will not empower the State to collect or levy the sales tax/purchase tax in respect of a transaction in the course of export which satisfies the aforesaid tests prescribed by Section 5 (3) of the Central Sales Tax Act. It would be unconstitutional in view of the constitutional bar to levy tax on sales in the course of export regardless of the fact whether an appropriate form is used or not. The transactions entered into by him which are such on which sales tax/purchase tax cannot be levied on account of the constitutional bar read with sub-section (3) of Section 5 of the Central Sales Tax Act cannot become exigible to tax merely because a wrong form is used (particularly when the appropriate form has not been devised by the Rule making authority). Liability for tax in respect of such transactions cannot be fastened on the respondent for the very good reason that the State has no power to collect or levy sales tax/purchase tax on such transactions. The U.P. Sales Tax authorities should have devised an appropriate form in this behalf. They can do so even now (as has been done under the Delhi Sales Tax Act by prescribing Form 49 to meet such a situation). Learned counsel for the appellant submits that till such a form is prescribed the respondent who claims to have entered into these transactions in the course of export as defined by sub-section (3) of Section 5 of the Act may furnish to his vendor a copy of Form-H as provided by the Central Sales Tax Act, 1956. The respondent has no objection and is prepared to do so. Under the circumstances, for the future

> purposes instead of furnishing form III-A under Rule 12-A of the Sales Tax Act, .the respondent will furnish a photostat copy of form H under the Central Sales Tax Act. Learned counsel for the respondent states that if such a copy is furnished to the vendor it will be accepted by the competent authority and the vendor will not be held liable for payment of sales tax/purchase tax in respect of such transactions subject to the rider that respondent will be held liable in case the purchases made by him do not satisfy the conditions and tests prescribed by sub-section (3) of Section 5 of the Central Sales Tax Act and are not made in the course of export within the meaning of the said provision. So far as the past transactions are concerned the respondent will not be liable provided he satisfies the aforesaid tests and the transactions of last sales made to him are in the course of export within the deeming clause of sub-section (3) of Section 5 of the Act."

23. It is no doubt true that mere wrong use of form would not determine nature of product but that is not the issue that arises here. The use of form by the assessee would be a relevant indicator as to how the product is understood by the class or section of people dealing with or using the product. If the assessee itself treated the product as being natural gas other than Compressed Natural Gas (CNG) and paid tax accordingly, then such act of assessee would lead to a reasonable construction that assessee also understood the product not to be Compressed Natural Gas (CNG) in common parlance. The revisionist cannot now be permitted to say that in common parlance 'RLNG' is Compressed Natural Gas (CNG). The Tribunal appears to be right in holding that once the assessee itself treated 'RLNG' to be natural gas other than Compressed Natural Gas (CNG) by purchasing product against Form D till October, 2014, it accepted the product as being natural gas other than Compressed Natural Gas (CNG). The authorities and the Tribunal were of the view that persons connected with the trade and industry in common parlance understood Compressed Natural Gas (CNG) as the gas supplied to energize vehicles in the transport sector. It is usually compressed between 200 bars to 250 bars and is materially distinct from natural gases supplied at much less pressure. Nothing is otherwise brought on record to show that natural gas in compressed form used for other purposes is also referred to or understood in common parlance as CNG, even when it is delivered at pressures

below 10 odd bar.

24. Sri Rahul Agrawal, learned counsel for the revisionist has made sincere efforts to persuade the Court that supply of natural gas at 200-250 bars is not essential for the natural gas to be construed as CNG. It is contended that before combustion, the CNG is significantly compressed and that an automobile vehicle receives CNG at different pressures at different places. It is contended that drop in pressure level of 200-250 bar does not render the gas something other than CNG. For the purposes, learned counsel has relied upon Regulation 110 of The Economic Commission for Europe of the United Nations (UNECE), published in the Official Journal of European Union (2015- L166) as an international standard on 30.6.2015. Learned counsel with reference to section 3 thereof submits that different parts of the vehicle receives gas at different pressure and that there are parts where gas is received at much lesser pressure. Bureau of Indian Standards also published a series of standards governing motor vehicle components. IS 15710 (2006): Road vehicles-Compressed natural gas (CNG) fuel systems component is relied upon to contend that CNG supplied for road vehicle could have pressure of upto 21.5 bar for some components.

25. The Court is not persuaded much by the literature furnished in this regard inasmuch as all such materials may at best have academic importance, but would not be a safe guide to judge it from the point of view of a person connected with trade or in common parlance. The Compressed Natural Gas (CNG) when is to be understood as a distinct class of natural gas, it would have to be understood in the sense it is so taken by public at large or the industry in common parlance. The mere fact that part of Automobile component energized by CNG receives gas at 21.5 bar would not mean that CNG is treated in common parlance or in trade or industry as natural gas supplied at a pressure of 21.5 bar. Compressed Natural Gas (CNG) in common parlance is usually understood as natural gas used to energize transport vehicle with least environmental damage caused. The department as well as the Tribunal do not appear to have erred in holding that Compressed Natural Gas (CNG) is the gas used for energizing vehicle in the

transport sector, particularly when revisionist itself treated it so and no other illustration is brought on record to show that natural gas supplied upto 10 bar (revisionist receives natural gas at 6-7 bar) is known and understood in the industry or common parlance as CNG.

26. Much emphasis is laid on behalf the revisionist in challenging the order of the Tribunal insofar as reliance was placed upon the definition of CNG given in Act of 2006. It is contended that definition of CNG given in the Act of 2006 cannot be relied upon for the purposes of interpreting Compressed Natural Gas (CNG) in the notification issued. Compressed Natural Gas (CNG) admittedly is not defined under the Act. However, Compressed Natural Gas is defined under Section 2(l) of the 2006 Act, in following words:-

> "2(1) compressed natural gas or CNG means natural gas used as fuel for vehicles, typically compressed to the pressure ranging from 200-250 bars in the gaseous state."

Natural Gas is also defined under Section 2(za) in following words:-

> "(za) "natural gas" means gas obtained from bore-holes and consisting primarily of hydrocarbons and includes-
>
> (i) gas in liquid state, namely, liquefied natural gas and degasified liquefied natural gas,
>
> (ii) compressed natural gas,
>
> (iii) gas imported through transnational pipelines, including CNG or liquefied natural gas,
>
> (iv) gas recovered from gas hydrates as natural gas,
>
> (v) methane obtained from coal, seams, namely, coal bed methane, but does not include helium occurring in association with such hydrocarbons;"

27. The tribunal has taken into consideration definition of compressed natural gas in the 2006 Act also for arriving at a conclusion that compressed natural gas is such gas, which is compressed to the pressure ranging from 200-250 bars in the gaseous state. According to Tribunal, such definition could be relied upon to ascertain the nature of commodity, which is required to be taxed.

28. Learned counsel for the revisionist contends that definition given in a

different taxing statute could not be relied upon for imposing tax under a different fiscal statute. Reliance is placed upon judgments delivered in M/s MSCO Pvt. Ltd. vs. Union of India and others, [1985 (1) SCC 51], M/s Annapurna Carbon Industries Co vs. State of A.P. [1976 (2) SCC 273], Commissioner of Central Excise, Pondichery vs. ACER India Ltd. [2004 (8) SCC 173], and Hindustan Aluminum Corporation Ltd. vs. State of U.P. [1981 (48) STC 411]. A Division Bench of Gauhati High Court in Bhola Ram Kanoo vs. State of Assam and others [2012 (56) VST 163] has been pleased to observe as under:-

> "15. It is now well-settled that definition of a word in another statute cannot be imported unless the Acts are pari materia and the word or expression used in any statute is to be used in the context of the particular statute for the reason that the legislative intent in the different statutes may be different. ……."

29. In M/s MSCO Pvt. Ltd. (supra), following observations have been made by the Apex Court with regard to applicability of definition contained in a different Act. Paras-4 and 5 of the judgment are reproduced:-

> "4. The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc., But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craies on Statute Law (6th Edn.) says thus and page 164:
>
> "In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone." Macbeth v. Chislett [1910] A.C. 220, 223."
>
> 5. When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its

> commercial sense. It is well known that under the law levying customs duties sometimes exemptions are given from the levy of the whole or a part of customs duty when the goods in question are sold either in the form in which they are received or in a manufactured or semi manufactured state to a manufacturing establishment for purposes of using them in manufacturing finished or semi- finished goods in order to lessen the cost of machinery or equipment employed in or raw materials used by such manufacturing establishment. The object of granting such exemption is to give encouragement to factories or establishments which carry on manufacturing business. The appellant, however, relies upon the meaning assigned to the word 'industry' in the Industrial Disputes Act, 1947 in support of its case. The expression 'industry' is no doubt given a very wide definition in section 2 (j) of the Industrial Disputes Act, 1947. It reads thus:
>
> "2 (j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.""

30. I find substance in the objection of the revisionist that definition of a term given in a different taxing statute ordinarily cannot be made the basis to interpret a word occurring in a different taxing statute. However, such a definition may be of persuasive value and could be looked into incidentally, for the purposes of determining the nature of product in common parlance. The “Natural Gas” as a legislative entry occurs in Entry 53 List I of Seventh Schedule to the Constitution of India, which reads as under:-

> “53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.”

31. Parliament in exercise of such power has enacted the Petroleum and Natural Gas Regulatory Board Act, 2006. Natural gas and CNG both have been defined in the Act of 2006. Although such definitions cannot be adopted or read *ipso facto,* while interpreting the term Compressed Natural Gas (CNG) occurring in the notification issued under the Act, but it can always constitute material of persuasive value for understanding the term in common parlance. GAIL which has supplied 'RLNG' to the revisionist has also submitted its written notes before the Tribunal to contend that product supplied by it to assessee is not Compressed

Natural Gas (CNG). Its contention that 'RLNG' is not understood in industry and in common parlance as Compressed Natural Gas (CNG) is also entitled to due weight and cannot entirely be ignored. It has otherwise come on record that 'GAIL' does not sell under its Registration No.9765800691 'CNG' in State of Uttar Pradesh.

32. It is admitted to the parties that natural gas has to be compressed for it to be transported from one place to another. The technical meaning sought to be assigned by the revisionist if is accepted, then there would hardly be any product available known as “natural gas”, inasmuch as for the natural gas to be put to use it has to be transported and for such purposes, pressure above atmospheric pressure i.e. 01 bar would have to be applied. The scientific or technical interpretation, as relied upon by the revisionist, would virtually result in rendering the entry itself meaning less inasmuch as natural gas other than Compressed Natural Gas (CNG) itself would not be available to be taxed as all kinds of natural gas when delivered to end consumer would only be in compressed form and would qualify to be termed as Compressed Natural Gas (CNG). An interpretation to an entry in a taxing statute which may lead to absurd consequences must give way to an interpretation which would give a reasonable meaning to it. In Associated Cement Companies Ltd. vs. Commissioner of Customs [2001 (4) SCC 593], the Apex Court while considering the definition of “goods” occurring in section 2(22) of the Customs Act, made following observations in para 24:-

> “24. According to Section 12 of the Customs Act, duty is payable on goods imported into India. The word “goods” has been defined in Section 2(22) of the Customs Act and it includes in sub-clause (c) “baggage” and sub-clause (e) “any other kind of movable property”. It is clear from mere reading of the said provision that any immovable article brought into India by a passenger as part of his baggage can make him liable to pay customs duty as per the Customs Tariff Act. An item which does not fall within sub-clauses (a), (b), (c) or (d) of Section 2(22) will be regarded as coming under Section 2(22) (e). Even though the definition of the goods purports to be an exclusive one, in effect it is so worded that all tangible movable articles will be the goods for the purposes of the Act by residuary clause 2(22)(e). Whether movable article comes as a part of a baggage,

> or is imported into the country by any other manner, for the purpose of the Customs Act, the provision of Section 12 would be attracted. Any media whether in the form of books or computer disks or cassettes which contain information technology or ideas would necessarily be regarded as goods under the aforesaid provisions of the Customs Act. These items are moveable goods and would be covered by Section 2(22) (e) of the Customs Act."

Such view was again reiterated by the Apex Court in subsequent decisions in Tata Consultancy Services vs. State of Andhra Pradesh [2005 (1) SCC 308] and Bharat Sanchar Nigam Ltd. vs. Union of India [2006 NTN (29) 307]. For the Natural Gas other than Compressed Natural Gas (CNG) to qualify as goods must have the attribute of being capable of transferred, delivered, stored, possessed. It must be deliverable. Compression is, therefore, essential for the Natural Gas to be termed as goods under Section 2(m) of the Act.

33. It is otherwise settled principle that court must avoid construction on the language of statute which would render a part thereof devoid of any meaning or application. (See: V. Jagannadha Rao and others vs. State of A.P., (2001) 10 SCC 401, Visitor AMU vs. K.S. Mishra, (2007) 8 SCC 593) and H.S. Vannkani and others vs. State of Gujarat and others, (2010) 4 SCC 301).

34. In view of the discussions aforesaid, I am of the considered opinion that 'RLNG' supplied by GAIL to the revisionist is not Compressed Natural Gas (CNG) so as to oust it from taxing Entry 8(a) of the Act, and the Tribunal has not erred in holding it so. No other point has been pressed. Question posed for consideration and pressed is answered accordingly.

35. Revision, accordingly, fails and is consigned to records.

Order Date :- 30.05.2017
Anil/Ashok Kr.

(Ashwani Kumar Mishra, J.)