

## COMMENT

# The ugly face of excise collector

Uttam Gupta assails the demand for a duty of Rs 449 crore on processed natural gas supplied to Gas India by ONGC

THE Government's Central Excise Department has done it again. The authorities at Surat in Gujarat have raised a demand on the Oil and Natural Gas commission (ONGC), Hazira, for excise duty on gas supplied to the Gas Authority of India Limited (GAIL) through the HBJ pipeline during the period 1987-1994. Under the relevant "tariff entry", natural gas in a gaseous state attracts excise duty at the rate of 10 per cent *ad valorem* w.e.f. March 1, 1994 and 15 per cent prior to that. On this basis, the demand is for a whopping Rs 499 crore. This amount will increase as a further demand is raised covering the period after June, 1994.

The excise authorities have raised the demand because they now feel that excise duty is leviable on natural gas. If they believed that the demand was justified as per the law of the land, what were they doing all these years? Natural gas is a precious national resource used in vital industries like fertilisers, power, petrochemicals etc. There is absolutely no question of this escaping the attention of the authorities. Why then they did not act in 1987, or say, in 1988? How come after a gap of almost eight years, they have discovered that excise duty is payable on gas?

Should excise duty be levied or not? This question has to be answered on its merits. But, assuming for a moment that the demand is held legally valid, the implications of raising it with retrospective effect need to be carefully considered. The demand raised on ONGC will, in fact, have to be paid for by the GAIL (the latter buys gas from the former and then sells it to the users) which, in turn, will collect it from the user industries along the HBJ pipeline.

The fertiliser industry is the predominant user of natural gas supplied through the HBJ pipeline. The product manufactured by the units along HBJ i.e. mainly urea, is under Government control and covered by the retention price and subsidy scheme (RPS). While the urea selling price has all along been controlled at a low level, the excess of the reasonable cost of production and distribution over this is reimbursed by the Government as subsidy.

Under the RPS, any increase in the administered price of inputs including gas or any statutory levy like the proposed excise duty on gas will have the effect of increasing the cost of production and in the face of control on selling price, lead to a higher subsidy payment on fertilisers. In other words, the Government will have to pay in the form of additional fertiliser subsidy for what the excise department is proposing to collect. It is important to add that the former will be more than the latter to the extent the consequential increase in Central sales tax and sales tax levied on *ad valorem* basis results in a much higher increase in the factory gate cost of gas. How will the Government arrange for the



funds? And, how will it justify additional subsidy requirements for the past period?

When funds are not there or inadequate, the fertiliser units which are being asked to pay for the excise demands, will inevitably suffer. Considering the huge amounts, they will be plunged into a financial crisis and their very existence may even be threatened.

Consider the power sector which is the second major user of natural gas. To the extent demand is raised on the NTPC or other power generators, they, in turn, will have to collect it from SEBs. Are the SEBs in a position to pay for huge liabilities for the past period? Given their precarious financial condition, they are unable to pay even the normal electricity bills. How can you expect them to meet such extraordinary demands? In view of this the possibility of the NTPC and the likes plunging into a liquidity crunch is not ruled out. This, in turn, will adversely affect the country's power development programme already under siege for want of a clear-cut power policy.

While in power and fertilisers, it is known as to who will pay for the consequential liabilities, for other industries, the manufacturers have to recover it from the consumers only by making adjustments in the selling price of their products. For the past period, however, this presents an impossible situation. For the goods already sold, how can they chase the consumers now and ask them to reimburse the differential?

Considering that unlike fertilisers, other industrial goods are subject to levy of excise

*It is ridiculous to treat a process of very essential purification as a manufacturing activity for tax purposes*

duty, perhaps, there may be scope for getting credit under MODVAT. But, we should not forget that MODVAT is a fairly recent facility and would still leave the past period uncovered. Besides, seeking reimbursement from the exchequer will meet with problems not very different from those connected with the fertiliser subsidy.

In short, the one-shot decision of the excise department will lead to serious repercussions on most of the key sectors of the economy with the potential of paralysing industrial activity overall.

The critical link is the ONGC. On its part, the ONGC was acting as per the law. As per the Central excise notification No. 179/85-CE dated August 1, 1985, excise duty is exempted if gas is manufactured in a mine. On this basis, ONGC was not charging any excise duty from GAIL, and the question of the latter collecting it from the consumers was irrelevant. The exemption claimed by ONGC under this notification was never contested by the excise authorities in the past.

Why then is the excise department now acting in the manner it has? It has taken the view that since ONGC, Hazira is not supplying the natural gas in the same form as received from the Bombay High, it cannot be considered as natural gas manufactured in mines. Does this interpretation make sense? It is important to see what goes on in the Hazira complex after the gas is received from offshore through the sub-sea pipelines. At the Hazira complex, gas received from

mines consist of a mixture of hydrocarbons i.e. C1, C2, C3, C4 and some heavier hydrocarbons associated with other gases like CO<sub>2</sub> and N<sub>2</sub> etc. It also contains hydrogen sulphide gas which is deadly poisonous, toxic and hazardous. This gas must be removed before the natural gas can be put to use in either industries or on the domestic front. So, what goes on at the Hazira complex is what is described as the sweetening of the gas i.e. removal of this poison.

Then, there is dehydration which means removal of water the gas absorbs in the process of sweetening. Moist gas in the presence of CO<sub>2</sub> is highly corrosive and must, therefore, be dehydrated.

There is one more step known as gas chilling. Because of variation in temperature during long distance transportation, some heavier fraction hydrocarbons are likely to form condensates. These condensates if allowed to accompany gas can cause damage to sophisticated equipment like gas crackers, computerised burner etc., in downstream industries like fertiliser plants and power units. The gas supplied to industries must be freed from these. Gas chilling achieves this.

These are essential processes that must be performed to ensure that the users get natural gas in the form which is fit for use and free from possible dangers and hazards to life, property and costly equipment. Contrary to the position taken by the excise department, no manufacturing is involved even as the fundamental characteristics of gas are very much the same when it goes out of the Hazira complex vis-a-vis the gas that entered it.

What would constitute manufacturing has been clearly brought out in a recent Supreme Court decision in *Sterling Foods vs. State of Karnataka* (63 STC 239) in the context of deciding the status of processing of prawn i.e. cutting of heads and tails, peeling, cleaning and freezing etc. Going on the basis that manufacture implies bringing into existence of new goods, the Supreme Court held that "processing of prawns" for making them fit for the market is not a process of manufacture. On the same logic, in the present case, processing of gas in the Hazira complex cannot be construed as a manufacturing activity as neither there is emergence of any new product nor, there is any change in the fundamental characteristics of the gas originally received from the Bombay High.

The excise authorities must see reason, withdraw the demand and close the chapter before the issue starts acquiring menacing dimensions. While doing incalculable damage to the user industries, this single act of the Central excise is also pregnant with the possibility of drawing even the sales authorities into the picture.

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