



Ref.No. FIPI/9
August 21, 2017

The Revenue Secretary
Government of India
Ministry of Finance
Department of Revenue
New Delhi

Sub – Request for clarification on the scope of 'petroleum crude' that is excluded from the levy of GST

Hon'ble Sir,

We would like to draw your attention to one of the critical issues that has been confounding the oil and gas industry in GST. The issue relates to whether gas condensates recovered from oil and gas wells falls in the scope of 'petroleum crude' which is excluded from the levy of GST for the time being

1. As per article 279 A of the Constitution of India *the Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on **petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.***
2. The terms 'petroleum crude' has not been defined in the Constitution of India. It is a settled law that in such a situation its meaning shall be as understood in common parlance.
3. Condensates are light crude oils with API gravity in the range of 56-62 degrees, obtained from the stabilisation of natural gas. These are hydrocarbons that exist in gaseous state in natural gas reservoirs and condense into liquid form once the natural gas is released in pipelines at the well head. These natural gas condensates are the products of the same wells or underground reservoirs from which petroleum crude and natural gas are produced and are used in refineries as feedstock for their crude distillation units (CDU) to produce downstream petroleum products i.e. Motor Gasoline, Kerosene Jet Turbine quality fuel as well as high octane distillate. It is also used to blend with heavy crude as a diluent.
4. The nature of such condensates and their close co relation with natural gas and petroleum crude has best been explained in the book **Refinery Operation and Management, 5th Volume** edited by Mr. Jean-Pierre Favennec, in the following words :-

Federation of Indian Petroleum Industry

"Crude oil is a liquid hydrocarbon, but that term also covers natural gas liquids and condensates. Natural gas liquids [NGL] and condensates are hydrocarbons whose molecules are in a gaseous state in a natural gas reservoir but which "condense", because of the reduction in pressure and temperature, when the natural gas is produced. This gives rise to the recovery of considerable quantities of propane and butane (liquefied petroleum gas) and also products with molecules containing between 5 and 10 or 15 carbon atoms, for which the correct description is condensate. These are categorized as light condensates (C5 to about C10) which are very similar to naphtha and heavy condensates (C5 to about C15) which yield naphtha and middle distillates (kerosene and gas oil).

It is not always easy to distinguish between condensates and light crude oils and hydrocarbon reservoirs vary almost infinitely between exclusively pure natural gas to exclusively heavy oil. Some fields also contain only condensate, but most crude oils consist of a mixture of hydrocarbon molecules, from gases to heavy tars. In order to magnitude terms, a condensate is classified as having a relative density of less than about 0.8.

..... The production of condensates is increasing rapidly, due particularly to the development of natural gas in North Africa and the Middle East, and is now of the order of 300 million tpa (6Mbb/d) in the world.

Their high yield of light products should give them a high value, but processing them in a refinery designed to run on heavier hydrocarbon feed stocks can give problems and restrict capacity. Generally, therefore, condensates are transported separately and then blended at the refinery with normal crude oils for processing. Now, however, refineries specifically designed for such condensates are being built."

5. In the Harmonized System of Nomenclature (HSN) such gas condensates are classified under Tariff Heading (TH) 27.09 which covers **Petroleum oils and oils obtained from bituminous minerals, crude**. This was also specifically indicated in the HSN Explanatory Notes the relevant portion of reproduced below –

"The heading covers gas condensates, i.e., crude oils obtained during the stabilisation of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurisation, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas."

6. For all practical and trade purposes gas condensates have always been treated as petroleum crude being obtained from oil and gas fields and being used in refineries for distillation of petroleum products. It was also specifically clarified by the CBEC after consultation with Ministry of Petroleum in Tariff Advice no. 125 of 81 that gas condensate is petroleum in natural state. The relevant portion of TA 125/81 is reproduced below- –

"4. The Ministry of Petroleum, Chemicals & Fertilizers, (Department of Petroleum) who were consulted, have examined the matter in detail in consultation with the Oil & Natural Gas Commission and Oil India Ltd., who are the producers of crude oil in the country.

Based on their opinion, that Ministry have advised that Condensate is a petroleum in natural state and is crude oil.

5. *Having regard to the advice tendered by the Ministry of Petroleum based on the opinion of the trade understanding, Board is of the view that Condensate is classifiable as crude mineral oil under item 68 CET."*

7. Internationally also as a common and accepted trade practise 'condensate' is traded and treated as "petroleum crude". As an evidence thereof certificates by two of the largest exporters of petroleum crude / condensate in the world – National Iranian Oil Company (NIOC) and Qatar International Petroleum Marketing Company (Tasweeq) are attached. In the USA also Condensate is treated as "Petroleum Crude". A copy of the Ruling by US Customs Administration is attached in support of this assertion.

8. Under both Central Excise and Customs Tariffs condensate was being classified in heading 2709 as crude oil. Considering the source of such condensate in the oil and gas reservoirs, use as feedstock for petroleum refineries, common trade parlance, classification in HSN and established international trade practices it is important that in GST regime condensates are continued to be treated as petroleum crude.

9. A doubt has been created only by the amendment to heading 27.09 in the Central Excise Act by the Taxation Laws Amendment Act 2017 as to whether under GST condensate would be treated as petroleum crude. In terms of the amended section 3 of the Central Excise Act, 1944 CENVAT would be levied on goods manufactured or produced in India at rates set forth in the Fourth Schedule. In the Fourth Schedule the tariff entry relating to petroleum crude i.e tariff heading 27.09, is at variance with entry appearing in the HSN or the Customs Tariff Act, 1975. The tariff heading has been split as follows:

Tariff item	Description of goods	Unit	Rate of Duty
(1)	(2)	(3)	(4)
2709	Petroleum oils and oils obtained from bituminous minerals, crude.	Kg
2709 10 00	- Petroleum oils and oils obtained from bituminous minerals	Kg.
2709 20 00	- Petroleum crude		Nil

10. The doubt arises from the fact as to whether condensate which were earlier classified under TH 27.09 of Central Excise Tariff Act as well as of the Customs Tariff Act would now be classified under heading 2709 20 00 as a petroleum crude or 2709 10 00 as a Petroleum oils and oils obtained from bituminous minerals. Following points need to be noted in this regard-

a. There is an error in which the sub-headings of 2709 have been split. Heading 2709 applies to petroleum oils and oils obtained from bituminous minerals, crude. It has clearly been explained in Explanatory note that –

"This heading covers crude petroleum oils and crude oils obtained from bituminous minerals e.g. from shale, calcareous rock, sand), i.e natural products, whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals."

In the tariff heading the word crude qualifies both petroleum oils and oils obtained from bituminous minerals. There would, therefore, be no distinction between petroleum crude and crude petroleum oils. Both are same nomenclatures and should be mentioned in the same sub heading. On the other hand the Taxation Law Amendment Act goes on to segregate them into "petroleum oils' classifiable under TH 27091000 and 'Petroleum crude' classifiable under TH 27092000.

b. The split of the tariff entry was possibly necessary to ensure that only "crude" petroleum oils (meaning thereby, undistilled, raw, oils) are charged to CENVAT and no other partially distilled oils. However, this split should not result in an unintended consequence of crude natural gas condensate not being treated as crude petroleum.

c. Condensate, as explained in paras above, is Crude petroleum oil and therefore out of the ambit of GST. It should not be classified as a 'petroleum oil or oil obtained from bituminous minerals under tariff heading 27091000.

11. It may be emphasised that the meaning ascribed to "petroleum crude" in the Constitution can in no way be restricted by an amendment in Central Excise Tariff. During the long discussion in the Empowered Committee there was no such conscious discussion and at the relevant time the HSN entry made no such distinction as is being sought to be made by the 2017 amendment. Even here the Customs Tariff does not make any such distinction and it has been clearly provided in GST law that it is the Customs Tariff that will apply for the purpose of HSN. Moreover, tariff heading 2709 does not appear in the schedule of rates of GST notified by the Government vide notification no 1/2017 – Integrated Tax (Rate) dated 28/6/17. To that extent the intention of the legislature appears to be not to subject condensate to any GST taxes.

12. It may also be pointed out that treatment of condensate as anything other than petroleum crude would not only be against the existing domestic and international trade practise but would also lead to structural distortions in the industry. Treatment of gas condensate as a GST product would make its use as a feedstock for refining units economically unviable because of the resultant tax @ 18%. This would discourage domestic production of condensate or its import and thus use as industrial fuel. Imports of condensate, which is an important feedstock for refineries, will also stop. Tax ambiguities should not impact efficient and optimal utilization of a valuable and scarce natural resource. Secondly, differential treatment of condensate will also increase the compliance burden on oil and gas companies as they will need to undertake GST compliances for only one of their products that is produced from the same oil and gas fields. Thirdly, this differentiation will also lead to avoidable disputes on classification as specifications of gas condensates are similar to those of light crude oils. Finally, taking condensate out of the ambit of petroleum crude will also impact the revenues of the Union and the States.

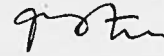
13. It is thus requested that:

(a) that it may be clarified that gas condensate is a petroleum crude oil as was being treated in pre GST time or, alternately, it is natural gas in liquid form which is also excluded from GST

(b) If for some reason it is to be treated otherwise the product may be exempted from GST or else its import will come to a grinding halt as it will stop making any commercial sense.

The matter may be treated with utmost urgency as the lack of clarity has resulted in near stoppage of its imports and also impacting domestic despatches.

Yours faithfully,



Dr. R.K. Malhotra
Director General

Encl. as above

NY K84319

March 19, 2004

CLA-2-27:RR:NC:SP:237 K84319 CATEGORY: Classification

TARIFF NO.: 2709.00.2010

Mr. Philip T. Cowen Philip T. Cowen CHB 500 East Levee Street Brownsville, Texas 78520

RE: Tariff classification of a condensate derived wholly from natural gas from Mexico.

Dear Mr. Cowen:

In your letter dated February 23, 2004, on behalf of PMI Trading Ltd., you requested a tariff classification ruling.

The product is described as condensate, testing 57.2 and 55.8 degrees A.P.I., that is derived wholly from natural gas and obtained during the stabilization of the natural gas immediately upon its extraction followed by its decantation into trucks and then into a tank.

The subheading for the condensate testing 57.2 and 55.8 degrees A.P.I. and derived wholly from natural gas will be 2709.00.2010, HTSUS, which provides for: Petroleum oils and oils obtained from bituminous minerals, crude: Testing 25 degrees A.P.I. or more: Condensate derived wholly from natural gas. The rate of duty is 10.5 cents per barrel.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Cantone at 646-733-3038.

Sincerely,
National Commodity

Robert B. Swierupski
Specialist Division

Director,

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