

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No.308 OF 2019**  
**AND**  
**APPEAL No.118 OF 2023**

Dated: 16 February, 2024

Present: Hon`ble Dr. Ashutosh Karnatak, Technical Member  
Hon`ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**APPEAL No.308 OF 2019**

**GUJARAT GAS LIMITED**

*(Through Mr. Tarang Pandya, Manager (S&L)*

2, Shanti Sadan Society,  
Near Parimal Garden, Ellisbridge,  
Ahmedabad – 380006

... Appellant

*Versus*

**PETROLEUM AND NATURAL GAS  
REGULATORY BOARD**

*(Through Ms. Vandana Sharma, Secretary, PNGRB)*

1<sup>st</sup> Floor, World Trade Centre,  
Babar Road, New Delhi – 110001

... Respondent

Counsel for the Appellant(s) : Piyush Joshi

Counsel for the Respondent(s) : Sonali Malhotra

## APPEAL No.118 OF 2023

### GUJARAT GAS LIMITED

(Through Mr. Ajitpal Singh)

Gujarat Gas CNG Station,  
Sector 5/C, Gandhinagar – 382006

Email: [ajitpal.singh@gujaratgas.com](mailto:ajitpal.singh@gujaratgas.com)

... Appellant(s)

*Versus*

### PETROLEUM AND NATURAL GAS REGULATORY BOARD

(Through the Secretary, PNGRB)

1<sup>st</sup> Floor, World Trade Centre,  
Babar Road, New Delhi – 110001

Email: [secretary@pngrbgov.in](mailto:secretary@pngrbgov.in)

... Respondent(s)

Counsel for the Appellant(s)	:	Piyush Joshi Sumiti Yadava
Counsel for the Respondent(s)	:	Sonali Malhotra Pinki Mehra Tanuja Dhoulakhandi Mohit Budhiraja Kartikey Joshi Harshita Toma

## J U D G M E N T

### PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Following short but important legal issue having very wide ramifications arises for consideration of this Tribunal in these two appeals:-

“Whether, upon amalgamation of a company, which is authorized entity for developing gas pipelines as well as city gas distribution

network (CGD network) in a certain geographical area (GA), with some other company, the financials (in particular CapEx. i.e. Capital Expenditure) of erstwhile company (i.e. original authorized entity) or that of the newly formed amalgamated company have to be considered for determining the natural gas pipeline tariff under the provisions of Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations.”

2. The facts of the two cases, relevant for determination of the above noted legal issue are that a company by the name *Gujarat Gas Company Limited* developed the Hazira-Ankleshwar Natural Gas Pipeline and was also holding authorization to develop city gas distribution (CGD) network in certain geographical areas (GAs) located in Gujarat. In the year 2015, it got amalgamated with three other companies namely GSPC Gas Company Limited, Gujarat Gas Financial Services Limited and Gujarat Gas Trading Company Limited. The scheme of amalgamation of these four companies was duly approved by the Hon'ble High Court of Gujarat under the provisions of Companies Act, 1956, vide order dated 18.04.2015 and a new company namely GSPC Distribution Network Limited was created, which was later on renamed as Gujarat Gas Limited i.e. the Appellant herein. The scheme of amalgamation and the subsequent change in the name of newly formed company from GSPC Distribution Network Limited to Gujarat Gas Limited was accepted by the Respondent Petroleum and Natural Gas Regulatory Board (PNGRB) also vide letter dated 25.01.2016.

3. The instant two appeals arise from the two tariff orders namely (a) Tariff Order No.TO/18/2019 dated 12.03.2019 which is impugned in Appeal No.308/2019 and determines the final initial unit natural gas pipeline tariff for the Hazira-Ankleshwar Natural Gas Pipeline and (b) Tariff Order bearing No. TP/2022-23/02 dated 29.06.2022, which is impugned in the Appeal No.118/2023 and which determines the revised initial unit natural gas pipeline tariff for the said gas pipeline.

4. The appellant is aggrieved by the refusal of the respondent Board in considering the CapEx of the newly formed amalgamated entity and in determining the tariff on the basis of the CapEx of the erstwhile Gujarat Gas Company Limited, thereby disregarding the order of the Hon'ble High Court of Gujarat dated 18.04.2015 vide which the scheme of amalgamation and formation of the new amalgamated entity i.e. the appellant herein was duly approved and the same was also accepted by the Board itself vide its letter dated 25.01.2016.

5. It was vehemently argued by the learned counsel for the appellant that the refusal of the respondent Board to consider the CapEx of amalgamated entity created pursuant to the scheme of amalgamation duly approved by the High Court for determination of the tariff is absolutely *ultra virus* of the statutory framework and the applicable regulations, and therefore, the impugned tariff orders are bad in law. It is submitted that the Board is required to determine tariff only in accordance with the financial data of the existing authorized entity and not on the basis of the financial data of a non-existent entity that is no longer holding the authorization for the relevant natural gas pipeline or CGD network. It is pointed out that the

Board itself had accepted the scheme of amalgamation of the above noted four companies pursuant to which the appellant company was formed and therefore, it committed a grave error in proceeding to determine tariff on the basis of financials of a company which had ceased to exist subsequent to the amalgamation.

6. The learned counsel further argued that the mergers and amalgamation are permitted for companies under the Companies Act as a legitimate and permissible means of corporate restructuring, and even in the PNGRB Act there is no specific bar for an authorized entity to merge / amalgamate with any other company and the authorized entity has freedom as well as is well within its right to use merger as a financial tool, particularly, in projects with longer gestation period. He would argue that such exercise of rights available under the relevant statutes cannot be barred or negated by the Board while determining tariffs. It is submitted that once the Board itself accepted the scheme of amalgamation in the instant case, it was bound to also accept as well as rely on the data of the entity framed in pursuance to the scheme of amalgamation, and therefore, it was bound to consider the historical costs of the fixed assets as being the historical cost as appearing in the books of the new authorized entity, and not of the erstwhile authorized entity that had ceased to exist upon amalgamation.

7. It is further argued that the respondent Board has erred in disregarding the fair value of the assets as accounted for in the books of appellant while determining the Net Opening Assets (NOA) in para number

5.2 of the impugned tariff order in Appeal No.118/2023 despite the fact that the appellant had accounted for the amalgamation in its books of account as per the "Purchase Method" as described in accounting standard-14 "Accounting of Amalgamation". It is argued that the appellant had claimed an aggregate of Rs.236.23 crores (considering Gross Block and Net Block of assets as same) as on 01.04.2013 on the issue of value of "Net Opening Assets as on 01.04.2013" but the Board has wrongly based its tariff computation on the asset details provided as part of provisional tariff filing in October 2012 by the erstwhile Gujarat Gas Company Limited and in doing so, the Board has refused to consider and be bound by the amalgamation scheme as well as to consider the fair value of the assets as accounted for in the books of appellant pursuant to the amalgamation.

8. According to the learned counsel, it is settled law that only an existing entity can be subjected to legal procedures, and therefore, the data of appellant / Gujarat Gas Limited alone should have been considered for imposition and determination of tariff.

9. To buttress his submission, the learned counsel has cited two judgments of the Hon'ble Supreme Court in *Saraswati Industrial Syndicate Ltd. v. Commissioner of Income tax* 1990 (Supp) SCC 675 and *Principal Commissioner of Income Tax v. Maruti Suzuki (India) Limited* 2020 18 SCC 331.

10. On behalf of respondent Board, it is argued that as per Clause 4 of Schedule A of Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 ("Tariff

Regulations”), in order to calculate the return on total capital employed, the total capital employed shall be equal to the gross fixed assets in the project less accumulated depreciation plus normative working capital (equal to 30 days of operating costs excluding depreciation and eighteen days natural gas pipeline tariff receivables). It is submitted that in the above equation, the gross fixed assets shall be equal to their actual historical cost of acquisition (including the cost of any subsequent replacement or improvement or modification) or that normatively assessed by the respondent Board, whichever is lesser and required in the Natural Gas Pipeline Project over its economic life based on the principles to create and sustain an efficient infrastructure.

11. Referring to the letter dated 25.01.2016 of the respondent Board wherein it accepted the scheme of amalgamation, it was argued by the learned counsel that the amalgamation was accepted by the Board with a clear mandate that the terms and conditions of the authorization shall remain the same, and therefore, the said letter shall have to be read in conjunction with the initial authorization accorded in the name of the original authorized entity i.e. Gujarat Gas Company Limited, which were mentioned in Annexure-I to the letter. He argued that despite the acceptance of the amalgamation by the Board, the terms and conditions of the initial authorization dated 05.07.2012 in the name of Gujarat Gas Company Limited remain absolutely same and not tinkered with. He pointed out that the authorization granted vide said letter dated 05.07.2012 stated that the gross fixed assets in the project less accumulated depreciation as on date of authorization and cost of any subsequent

replacement / improvement / modification has to be considered in determination of tariff.

12. The learned counsel further submitted that Section 22 of PNGRB Act provides, *inter alia*, to safeguard the consumer interest and at the same time to allow the recovery of costs of transportation by the authorized entity in a reasonable manner. It is his submission that the authorized entity in this case, prior to amalgamation, was providing services to the shippers and was maintaining the infrastructures at the historical costs on which the same was built and post amalgamation, no major expansion/addition/modification was undertaken by appellant, and therefore, the contention of the appellant for assessing its assets at fair value is unsustainable in law. He would submit that the costs incurred towards improvement, modification, expansion, or replacement alone shall have to be considered while assessing any change in the historical costs of the fixed assets of the authorized entity and the amalgamation does not fall under any of these heads. He submitted that a bare perusal of Clause (2) of attachment to Schedule A of the PNGRB Tariff Regulations, 2008 would reveal that the amalgamation and consequent relief stating of assets at fair values does not fall under any of the heads stated therein and therefore, cannot be considered.

13. It is further argued by the learned counsel that the historical costs depict the real capital / actual cash outflow invested in the laying of the pipeline and the fair value carried in the books of the appellants is merely an accounting method consisting of revaluation of amount to obtain the fair



value, and therefore, the said fair value is not a correct measure of the cash outflow amount for tariff determination. It argued that the fact that assets are restated in the books of appellant at fair value which is higher than the historical costs submitted to the Board by the appellant is proof that an element of revaluation is hidden in such fair value which should not be considered by the Board for tariff determination as per regulatory provisions.

14. On these submissions, the dismissal of the appeal is sought by the Respondent Board.

15. We have given our anxious consideration to the rival submissions of the learned counsels and have perused the impugned order as well as the entire record.

16. The procedure to be adopted by the PNGRB for determining the natural gas pipeline tariff and parameters / factors to be considered while fixing such tariff have been specified in the Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008, hereinafter referred to as the "Tariff regulations". Regulation 4(1) provides that the natural gas pipeline tariff shall be determined as per the procedure given in Schedule A. Clause 2 of Schedule A refers to methodology for determination of natural gas pipeline tariff and is reproduced hereunder:-

***"2. Methodology for determination of natural gas pipeline tariff***

*The unit rate of natural gas pipeline tariff to be charged for a period shall be the calculated based on the "Discounted Cash flow" (DCF) methodology considering the reasonable rate of return as specified in clause 3 to be the project's internal rate of return. The parameters relevant to the applicability of the DCF methodology considering the reasonable rate of return as specified in clause 3 to be the project's internal rate of return. The parameters relevant to the applicability of the DCF methodology have been described in detail in clauses 4 to 6 below."*

17. Similarly, Clause 4 of the Schedule A is also material in this regard and is reproduced hereunder:-

***"4. Return on total capital employed***

*(1) The reasonable rate of return shall be applied on the total capital employed to determine the return on capital employed in the project over its economic life and the authorized entity is free to leverage the financing of the project in any suitable manner.*

*(2) The total employed shall be equal to the gross fixed assets in the project less accumulated depreciation plus normative working capital (equal to thirty days of operating costs excluding depreciation and eighteen days natural gas pipeline tariff receivables).*

*(3) The gross fixed assets shall be equal to their actual historical cost of acquisition (including the cost of an subsequent replacement or improvement or modification) or that normatively*

*assessed by the Board, whichever is lesser and required in the natural gas pipeline project over its economic life based on the principles to create and sustain an efficient infrastructure, namely:-*

*(a) Treatment of an investment in the fixed asset in determination of total capital employed shall be as per the basis indicated in Attachment 2;*

*(b) Capital costs in similar projects, if any, elsewhere in India benchmarked on a "like-to-like" basis;*

*(c) Appropriateness of the pipeline design and the operating philosophy with regards to maximum allowable operating pressure;*

*(d) Optimization of the equipments and facilities such as, compressors, metering systems, SCADA, fire fighting required, based on an assessment of the appropriate available technology;*

*(e) Spur lines;*

*(f) Design parameters for compressors; and*

*(g) Assessment of the costs of major equipments and facilities in the natural gas pipeline, laying or building costs, project management consultancy and preoperative expenditure.”*

18. Attachment 2 to Schedule A provides for treatment of a fixed asset in the determination of return on total capital employed for natural gas pipeline tariff and is reproduced hereunder:-

*“The basis of considering fixed assets in a natural gas pipeline in the determination of the return on total capital employed shall be as per the following norms:-*

*(1) A fixed asset in a natural gas pipeline is a tangible asset having a useful operating life of more than one year and is integral to the generation of revenues through natural gas pipeline tariff. Investment in securities, goodwill, current assets, accumulated loss not written -off, work-in-progress, etc. are not fixed assets.*

*(2) Any change in the historical cost of the fixed asset due to revaluation or capitalization of losses shall not be considered. However, cost incurred in improvements, modification, expansion or replacement of any fixed asset shall be considered in line with the treatment prescribed in the mandatory accounting standards of The Institute of Chartered Accountants of India.*

*(3) Only the cost of land purchased and used for the putting the facilities essential to the natural gas pipeline shall be considered. Land purchased for any future use (such as for putting-up facilities required for expansion of capacity in natural gas pipeline for its extension) shall be considered only when used.*

*(4) Omitted*

*(5) A fixed asset shall be considered for return on capital employed on a "rolling basis" till the end of the economic life of the natural gas pipeline project, provided it is not de-commissioned. On decommissioning of the fixed asset, the value realized on its sale or scrapping should be considered as a project inflow in the DCF calculations. In the terminal year of the economic life, the residual value of the fixed asset, which is the difference between the original cost less the amount of accumulated depreciation shall be treated as a project inflow in the DCF calculations for natural gas pipeline tariff.*

*(6) Treatment of line-pack volume in natural gas pipeline shall be as per the procedure indicated below:-*

*(a) Assessment of the volume of natural gas required as line pack in the natural gas pipeline as and when commissioned shall as be specified in the relevant regulations for the technical standards and specifications, including safety standards.*

*(b) The line-pack value of natural gas in natural gas pipeline tariff shall be considered as a non-depreciating fixed asset and the value to remain fixed over the economic life of the project.*

*(c) The value of the line-pack volume shall be derived by multiplying the volume of linepack by the average cost of natural gas at the point on injection of natural gas into the*

*natural gas pipeline at the time of commissioning of the natural gas pipeline.*

*(d) The salvage value of the line-pack volume at the end of the economic life of the project shall be equal to its value assessed at the time of its capitalization specified under sub-clause (b) and shall be considered as a project inflow.”*

19. It is, thus, amply clear that the fixed asset or the capital asset for the authorized entity which has been authorized to develop a natural gas pipeline and CGD network is the gas pipeline itself having useful operating life of more than one year. As per the above noted Clause 4 of the Schedule A to the Regulations, 2008, in order to calculate the return on total capital employed, the total capital employed shall be equal to the gross fixed assets in the project less accumulated depreciation plus normative working capital (equal to 30 days of operating costs excluding depreciation and 18 days natural gas pipeline tariff receivables). It also provides that the gross fixed assets shall be equal to their actual historical costs of acquisition (including the cost of a subsequent replacement or improvement or modification) or that normatively assessed by the Board, whichever is lesser and required in the natural gas pipeline project over its economic life based on the principles to create and sustain an efficient infrastructure. Hence, it cannot be disputed that only the costs incurred towards improvement, modification, expansion or replacement alone of the fixed assets of the authorized entity shall have to be considered while assessing any change in historical costs of the fixed asset, while determining the natural gas tariff.

20. In the case at hand, the original authorization for developing of the Hazira-Ankleshwar Natural Gas Pipeline as well as the City Gas Distribution Network was in the name of Gujarat Gas Company Limited which got amalgamated with three other companies in pursuance to which a new entity namely GSPC Distribution Network Limited was created. It was subsequently renamed as Gujarat Gas Limited i.e. the appellant herein. Admittedly, the scheme of amalgamation stands duly approved by the Hon'ble High Court of Gujarat vide order dated 18.04.2015. The respondent Board has also accepted such amalgamation vide letter dated 25.01.2016.

21. As part of provisional tariff filing in October, 2012, by the erstwhile Gujarat Gas Company Limited, it had provided the asset details thereby mentioning its CapEx at Rs.64.4 crores. In pursuance to the amalgamation, the appellant projected its CapEx at Rs.236.23 crores as on 01.04.2013 on the issue of value of "Net Opening Assets as on 01.04.2013". It is, thus, seen that there has been a significant jump in the CapEx projected by the appellant in the year 2013 to the CapEx projected by its predecessor in the year 2012.

22. As already noted hereinabove, the respondent Board while issuing the impugned tariff orders refused to consider the CapEx of newly formed amalgamated entity i.e. appellant and has proceeded to determine the tariff on the basis of the CapEx projected by the erstwhile Gujarat Gas Company Limited.

23. We may note that the capital expenditure i.e. CapEx are funds used by a company to acquire, upgrade and maintain physical assets such as property, plants, buildings, technology or equipment. Making capital expenditure on fixed assets would include repairing a roof (if the useful life of the roof is extended), purchasing a piece of equipment or building a new factory etc. The basic formula for calculation of CapEx is:

‘PP&E (change in Property, Plant and Equipment) plus current depreciation’.

24. In other words, capital expenditures are major purchases that are usually utilized on a company’s balance sheet instead of being expensed at the time of purchase. Assets that are capitalized can be accounted for over their useful lifetime and depreciated.

25. In the instant case, we are concerned with determination of natural gas tariff for the Hazira-Ankleshwar Natural Gas Pipeline developed by erstwhile Gujarat Gas Company Limited which ceased to exist upon amalgamation with three other companies. The authorization for the said natural gas pipeline now stands in the name of the appellant which is a new entity created subsequent to the amalgamation. There cannot be any dispute with the legal fiction that upon amalgamation, the amalgamating companies cease to exist and their assets / liabilities are transferred and/or taken over by the newly created amalgamated company. However, what arises for consideration of this Tribunal is whether the fixed assets as well as the capital expenditure of the newly created amalgamated company,



which belonged to not only one but all the amalgamating companies, can be taken into account for determination of tariff for the said gas pipeline.

26. Having regard to the relevant regulations concerning fixation of Natural Gas Pipeline Tariff, already reproduced hereinabove, it is evident that the fixed asset i.e. the gas pipeline and any change in the historical cost of such pipeline shall have to be considered. Such change in historical costs may be by way of improvements, modification, expansion, replacement etc. However, any such change in historical costs due to revaluation or capitalization of losses do not merit any consideration.

27. We may note here that the process for determination of Natural Gas Pipeline Tariff is project specific and not the Company (i.e. the authorized entity) specific. The fixed assets for an entity authorized to develop gas pipeline for a geographical area (GA) is the gas pipeline itself. Therefore, the cost of laying the gas pipeline and expenditure on its maintenance, improvement, modifications, replacement etc. alone need to be taken into consideration for fixing tariff for the said pipeline. An entity may have obtained authorization for developing gas pipeline in various different GAs but the tariff for each such pipeline shall have to be determined separately by considering the relevant parameters noted hereinabove.

28. Therefore, even if an authorized entity (which has got authorization to develop a gas pipeline in a GA) amalgamates with some other companies to create a new entity, still the fixed asset to be considered for determination of tariff under the Tariff Regulations, 2008, would be that particular gas pipeline and nothing else. Of course, any change in its

historical cost by way of maintenance, improvement, replacement etc. also shall have to be considered. It would be fallacious to say that the entire fixed assets of the new created amalgamated company and its entire CapEx have to be considered for determining the tariff for the said gas pipeline.

29. Further, Section 22 of the PNGRB Act, 2006, provides, *inter alia*, that while determining transportation tariff for a gas pipeline, the Board shall safeguard the consumer interest and at the same time allow recovery of costs of transportation by the authorized entity in a reasonable manner. So, if the Board proceeds in the cases like the present one to consider fixed assets as well as CapEx of the newly created amalgamated entity for determining the tariff, it shall not only be against the interests of the consumers but also immensely unjust and unreasonable for them as the tariff so determined shall be on astronomically higher side.

30. Here, we are reminded of the words of the Hon'ble Supreme Court in *Principal Commissioner of Income Tax (Central) 2 v. M/s Mahagun Realtors (P) Ltd.* SLP (C) No.4063/2020 decided on 05.04.2022, that amalgamation is unlike winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues – enfolded within the new or existing transferee entity. In other words, the business and the venture lives on but within a new corporate residence, i.e., the transferee company. Therefore, it is essential to look beyond the mere concept of destruction of the corporate entity upon the amalgamation and look upon the venture itself.

31. Hence, we hold that when an authorized entity holding authorization for developing a gas pipeline amalgamates with certain other company/companies whereupon a new entity is created and authorization also is transferred in the name of new entity, the fixed assets and the CapEx of the erstwhile authorized entity existing as on the date of amalgamation alone are material to be considered for determination of Natural Gas Pipeline Tariff.

32. The issue framed in Paragraph no.1 hereinabove stands answered accordingly.

33. The venture in the instant case is to develop and maintain the Hazira-Ankleshwar Natural Gas Pipeline and to develop the CGD network in certain geographical areas in Gujarat. The venture remains the same even upon amalgamation of the original authorized entity i.e. Gujarat Gas Company Limited with other three companies pursuant to which the appellant company was created. Therefore, in view of the relevant provisions of PNGRB Act, as well as the Tariff Regulations, 2008, which have been noted hereinabove, what the Board was required to consider for determination of gas pipeline tariff was the fixed asset of the venture i.e. gas pipeline alongwith change in its historical costs on account of maintenance, improvement, modification, replacement, etc. as well as the transportation costs. It would have been against the spirit of the PNGRB Act and the Regulations framed thereunder, if the Board would have proceeded to take into account the cumulative fixed asset as well as CapEx of the newly created amalgamated entity.

34. We may note again, at the cost of repetition, that the original authorized entity i.e. erstwhile Gujarat Gas Company Limited had, as part of provisional tariff filing in October, 2012, provided the details thereby mentioning its CapEx at Rs.64.4 crores. Within a few months, in pursuance to the amalgamation, the appellant projected its CapEx at Rs.236.23 crores as on 01.04.2013. Admittedly, there has been no improvement / modification/expansion or replacement etc. in the fixed assets of the authorized entity i.e. gas pipeline. Such astronomical jump in the CapEx within a few months from Rs.64.4 crores to Rs.236.23 crores is beyond comprehension, and therefore, has been rightly discarded by the Board while determining the gas pipeline tariff.

35. In view of the above discussion, we do not find any legal flaw or error in the impugned tariff orders. The appeals are devoid of any merit and are hereby dismissed.

**Pronounced in the open court on this 16<sup>th</sup> day of February, 2024.**

(Virender Bhat)  
Judicial Member

(Dr. Ashutosh Karnatak)  
Technical Member (P&NG)

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