IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1799/2012-EX[SM]

(Arising out of Order-in-Appeal No.130-CE/APPL/KNP/2012 dated 09/04/2012 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur)

M/s Green Gas Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise &

Service Tax, Kanpur **Respondent**

Appearance:

Shri Kartikeya Narain (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 16/04/2018
Date of Decision : 16/04/2018

FINAL ORDER NO. – 71055/2018

Per: Anil Choudhary

The issue in this appeal relates to denial of Cenvat credit on Cascade/storage tank/cylinders for 'Compressed Natural Gas' on the ground that they have not been used in the factory premises of the appellant.

2. The appellant is a joint-venture between Gas Authority of India Ltd. (GAIL) and Indian Oil Corporation Ltd. (IOCL), are registered with the Central Excise Department for the manufacture of 'Compressed Natural

Gas' or 'CNG'. CNG is classifiable under Tariff Entry No.27112900 of the first Schedule of CETA. The appellant is also engaged in the distribution of 'CNG' at Agra and Lucknow. The appellant required cascades for manufacture of CNG. Cascades are system of storage for compressed gas where many storage tanks/cylinders are kept in close proximity and are connected to each other, the purpose of which is to stabilize and maintain the pressure in the tanks while pumping the compressed gas out of them for filling the same in the vehicles, etc. Cascades are used as the primary mode of storing CNG. During investigation, statement of Shri Akhil R. Gupta, Chief Manager (Project) of the appellant was recorded wherein on 25/01/2011, he stated *inter-alia* that they are manufacturing and selling the CNG in two ways: –

The CNG from the compressor in the factory or their works is stored/transferred to the Cascades and then from the cascade to the dispensers for ultimate sale to the public. The said process is carried on, in the factory of the appellant at Agra. The dispensing station at factory is commonly known as mother station and is owned by the appellant.

The CNG is also sold through other outlets known as daughter station. These daughter stations are owned by HPCL/IOCL, and for the purpose of transporting CNG from factory to these daughter stations, CNG is filed into the cascades which are permanently mounted on 'Light Commercial Vehicles'. The CNG is then transported to the daughter station through these cascades. At daughter station these cascades are connected with the dispensers for selling to the customers.

3. These cascades are specially designed tanks which are used for storage of CNG as well as their transportation. These cascades are also designed for absorbing the difference in pressure of CNG. When the CNG is dispensed through the dispensers, then there is pressure change which is absorbed by these cascades. Under the terms of agreement with HPCL/IOCL, appellant have installed certain equipments at their own cost. Appellant is responsible for maintaining the equipment and related infrastructure in proper working condition. These equipments include dispensers, boosters, cascades, compressors and other associative equipments. Thus these cascades are used for both storage of CNG as well as transportation of CNG.

4. In reply to the SCN dated 24th March, 2011, for the period 2005-06 and 2006-07 invoking the extended period of limitation, the appellant had urged that these

cascades are in the nature of storage tank and therefore fall in the definition of capital goods as defined in Rule 2(a)(A)(vii) wherein capital goods means, also storage tank used in the factory of manufacturer of the final product. It was also urged by the appellant that these cascades have been used in the factory for manufacture of final products – CNG. CNG gets manufactured upon compression of natural gas and the same has to be stored in cylinders/Tanks/Cascades without which the production and sale of CNG is not possible. These cascades are being used inside the factory for the manufacture and storage of CNG as well as for delivery of CNG outside the factory to the daughter stations or retail outlets. The final product of the appellant – CNG cannot be cleared from the factory without the cascades/cylinders/storage tanks by whatever name called. Accordingly, the learned counsel urges that these cascades are eligible for Cenvat credit as capital goods. Further the learned counsel urges that the show cause notice is bad for invocation of extended period of limitation as the appellant is also registered with the Central Excise Department and the process of manufacture and storage of CNG is known to the Department, since the date of registration and/or beginning of production. The learned counsel also points out that the appellant have also been subject to audit by Revenue from time to time and earlier to this they were also audited in the year 2007. Thus the grounds of invocation of extended period of limitation are not available and as such the show cause notice is hit by limitation. Accordingly, learned counsel prays for allowing the appeal with appropriate relief.

5. The learned A.R. for Revenue have relied on the impugned order.

6. Having considered the rival contentions, I find that the manufacture of CNG is not possible without the use of the cascades in question which acts as the storage tank for the CNG upon its manufacture. Either the appellant can sell CNG from their factory through dispensers or through a system of pipelines for transportation of CNG to the daughter stations or retail outlets, or as in the present case they are filling the CNG in 'Light Commercial Vehicle' mounted cascades which are filled inside the factory directly upon manufactures and as such are used both for storage of the manufactured CNG and for its transportation to the daughter stations or the retail outlet. Thus under the facts and circumstances, without usage of these movable

or lorry mounted cascades the appellant cannot manufacture and cleared their output namely CNG. Thus these cascades are in the nature of storage tanks for the manufacture and sale of CNG. Accordingly, they qualify as capital goods under Rule 2(a)(A)(vii) of the Cenvat Credit Rules, 2004. Accordingly, the impugned order is set aside and the appeal is allowed. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated & Pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Lks