IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/199/2012

(Arising out of Order-in-Appeal No. 2/2012 dated 31.1.2012 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Total Oil India Ltd. Appellant

Vs.

CCE, Salem Respondent

Appearance

Shri S. Prashant Sai, Advocate for the Appellant
Shri R. Subramaniam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.05.2018**

Final Order No. **41628 / 2018**

Per Bench

The appellants are engaged in the business of integrated LPG services like import, storage, sales, supply and distribution of LPG and also provide specialized storage facilities at customer's premises. They enter into contract with the customers who express their interest for procurement of LPG requirements including installation and maintenance /

management of LP storage system at customer's location. They obtain all requisite Government approvals and charge 'lease rentals. The department was of the view that appellants are liable to pay service tax on the lease rentals under 'Storage and Warehousing Services'. Show cause notice was issued raising the demand, interest and for imposing penalties. After due process of law, the original authority confirmed an amount of Rs.5,52,884/- along with interest and imposed penalties. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of appellants, ld. counsel Shri S. Prashant Sai submitted that as per the agreement, in order to facilitate continuous supply of LPG to the customer, the appellant also undertakes to install storage units called 'bullets' in the customers' premises for the supply of LPG, consideration was paid to appellant on the basis of quantity delivered to customers wherever the delivery takes place. These bullets are property of the appellant and are leased out to the customers by transferring the right to use the bullets and lease rentals are collected from customers. On such lease rentals, the appellant is paying VAT / CST as these are 'deemed sales' as provided under Article 399(29A) of the Constitution. That therefore the lease rentals do not come within the purview of levy of service tax. He relied upon the decision in the case of

Inox Air Products Ltd. vs. Commissioner of Central Excise, Raigad – 2015 (38) STR 179.

3. The ld. AR Shri R.Subramaniam supported the findings in the impugned order.

4. Heard both sides.

5. As brought out from facts, it is the containers / bullets in which the LPG is stored that is leased out to the customers. The lease is in the nature of right to use these bullets for storage. As per clause 1.3 of the contract, it is the customers who are responsible for carrying out connection from the tap off point to various equipments installed by customer for use of LPG. The storage units are installed in the customer's premises and appellants do not have any control over the LPG stored in them. Similar issue was decided in the case of Inox Air Products vs. Commissioner of Central Excise, Raigad – 2015 (38) STR 179. The relevant portion of the order is reproduced as under:-

> *"In this case to decide the taxability of service, the real test is that, when the goods have been passed on to the customer. From the facts of the case, it is emerging that the gas in the storage tank installed at the place of buyer and the goods transferred to the buyer. Therefore, there is no control of the appellant on the goods in storage tank, after gas is stored in the tank the whole responsibility of the goods is with the buyer only. In these circumstances, as the appellant is not having any control over the goods and they are not responsible for the security of the goods, the appellant is not covered under the category of Storage and Warehousing Services as defined under Section 65(102) of the Finance Act, 1994."*

6. On appreciating the facts, we find that the above decision squarely applies. Following the same, we hold that the demand cannot sustain. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex