

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40908 of 2014

(Arising out of Order-in-Appeal No. 47/2014 (PST) dated 3.3.2014 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Total Energies Marketing India Pvt. Ltd. Appellant

Chitalamangalam, Madurantagam Taluk
Kancheepuram – 603 503.

Vs.

Commissioner of GST & Central Excise

Respondent

No. 1, Goubert Avenue
Beach Road, Puducherry – 605 001.

APPEARANCE:

Ms. Manasa Srinivasan, Advocate for the Appellant
Shri Rudra Pratap Singh, ADC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40719/2023

Date of Hearing : 21.07.2023

Date of Decision: 25.08.2023

Per M. Ajit Kumar,

This is an appeal filed by the appellant against Order in Appeal No. 47/2014 (PST) dated 3.3.2014 passed by the Commissioner of Central Excise (Appeals), Chennai.

2. Brief facts of the case are that the appellants who are registered with the Service Tax Department are engaged in providing 'Storage & Warehousing Services' to various clients. On specific intelligence that the appellants are engaged in the business of integrated LPG services including import, storage, sales, supply, distribution of LPG are also involved in providing specialized storage facilities at the customers' premises. Further, it was found that the appellants were selling LPG to

their customers and to facilitate continuous supply, they had installed storage units called 'bullets' in the premises of their customers. Apart from selling LPG, the appellant was also collecting 'lease rentals' for erection, commissioning and maintenance etc. of these bullets from their customers. For the period from 1.4.2009 to 31.3.2010, the appellant collected a sum of Rs.10,75,500/- from their customers towards 'lease rentals' of these facilities. Show Cause Notice was issued to the appellant proposing to demand service tax of Rs.1,07,550/- on the gross amount received for the above period alleging that the erection, commissioning and maintenance etc. of the facility amounts to providing service under 'Storing and Warehousing' service along with other adjudicatory liabilities. After due process of law, the original authority confirmed the service tax demand of Rs.1,07,550/- along with interest and also imposed penalty under sec. 76 of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the adjudication order. Hence the appellants have filed this present appeal assailing the findings and order passed by the learned Commissioner (Appeals).

3. No cross-objection has been filed by the respondent-department.

4. The learned counsel Ms. Manasa Srinivasan appeared for the appellant and learned AR Shri Rudra Pratap Singh, Additional Commissioner appeared for the respondent-department.

5. The learned counsel Ms. Manasa Srinivasan at the outset submitted on behalf of the appellant that the Hon'ble Tribunal in their own case mentioned below has held that they are not rendering service covered under the category of Storage and Warehousing Services as defined under Section 65(102) of the Finance Act, 1994:-

a. Final Order No. 41628/2018 dated 23.05.2018 in Appeal No. ST/199/2012-DB.

- b. Final Order No. 40418/2019 dated 07.03.2019 in Appeal No. ST/41297/2013-DB.

The Department has not filed any appeal against the same. Hence, the decisions have attained finality. Without prejudice, the appellant submits that the activity undertaken by the appellant is in the nature of deemed sales as per Article 366 (29A) of the Indian Constitution, and is outside the purview of levy of Service tax. Furthermore, they were paying VAT on 'lease rent' and it is well settled that VAT and Service tax are mutually exclusive. The activity undertaken by the appellant is not classifiable as 'Storage and Warehousing' services. The real test is to see who has control over the goods stored inside the storage tank. Since the appellant had no control over the gas stored in the storage tank and the control rested with the customers, it was not 'storage and warehousing' services. No interest is leviable and no penalty is imposable as the demand itself merits to be set aside. She prayed that the demand confirmed vide the impugned Order-in-Appeal may be set aside and appeal may hence be allowed with consequential relief.

6. The learned AR Shri Rudra Pratap Singh supported the findings in the impugned order. He stated that the definition of storage and warehousing service includes storage and warehousing of liquids and gases. Further, the appellant has supplied, installed, commissioned and undertaken maintenance of the bullets which was designed to store LPG meeting BIS standards. The contract for storage and warehousing of LPG was for the provision of a service and not a composite contract and hence he contested the claim made by the appellant that the payment of 'lease rent' amounted to 'deemed sale'

as per Article 366 (29A) of the Constitution of India. It was his view that warehousing of LPG could not be held to be deemed sale of goods. He stated that the appellant was not liable to pay VAT charges and if they are doing so, it was not as per law. He further stated that just because the facility is located within their customers' premises, it cannot be said that the appellant was not providing storage and warehousing service as the location of the warehouse was not important for taxing a service as per the definition given. He hence prayed that the impugned order may be upheld. On a specific query from the Bench whether the department has filed appeals against the **Final Order No. 41628/2018 dated 23.5.2018** and **Final Order No. 40418/2019 dated 7.3.2019** passed by the Tribunal wherein similar issue stands settled, he submitted that the department has accepted the orders of the Tribunal on monetary limits.

7. Heard the rival sides. We find that the issue of classification has reached finality in the appellants' own case as no appeal has been filed against the orders passed by this Tribunal for the earlier period on the same subject. We find that issues relating to "Storage and warehousing service" was clarified vide Letter F. No. B11/1/2002-TRU dated 1.8.2002. The relevant portion of the said clarification is extracted below:

"3. Storage and warehousing service for all kinds of goods are provided by public warehouses, private warehouses, by agencies such as the Central Warehousing Corporation, Air Port Authorities, Railways, Inland Container Depots, Container Freight Stations, storage godown and tankers operated by private individuals etc. The storage and warehousing service provider normally make arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods, makes security arrangements and provide insurance cover etc. Service provided in ports has already been covered under the category of port service".

(emphasis added)

None of these activities are seen to be provided by the appellant to the customers, further unlike in a warehouse, the goods (LPG) stored in the 'bullet' storage facility installed at the customers premises is not under the control of the appellant and the whole responsibility of the stored LPG is with the customer. Hence, they are not covered under the category of Storage and Warehousing Services as defined under Section 65(102) of the Finance Act, 1994. The legal issue has also reached a finality on merits. Hence, we do not deem it necessary to examine the issue raised by Revenue of whether "deemed sale" is involved or not and whether payment of VAT was necessary, at this stage.

8. Since the issue is decided on merits in the appellants favour the other issues like payment of interest, penalty etc. do not survive.

9. Having regard to the discussions above, the impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Pronounced in open court on 25.8.2023)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)