(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K.Puram, New Delhi-110066

Appeal No.ST/60059/2013
(Arising out of Order-in-Original No.43-45/Commr/2013 dated 16.07.2013 passed by Commissioner of CE and ST, LTU, New Delhi)

Gail India Ltd …Appellant
Vs
CCE Delhi …Respondent

Appearance:
Present for the Appellant : S/Sh V.Laxmikumaran & Karan Sachdeva, Advocates
Present for the Respondent : Sh Amresh Jain, DR

Coram: HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing: 06.07.2017
Dt. of pronouncement: 24.07.2017

Final Order No.55445/2017

Per B. Ravichandran,

The appellant is aggrieved by the order dated 15.07.2013 of Commissioner (LTU), New Delhi. The appellants are engaged in trading and transportation of natural gas. The appellants entered into contracts for sale of natural gas with various clients. They have transported the gas for sale up to the point of delivery. In terms of agreement, the appellants indicated three charges in the invoices; the price of gas, marketing margin and transportation cost. They have paid VAT on the entire invoice value and paid Service Tax only on the transportation cost. The dispute in the present appeal relates to the includability of marketing margin charged by the appellant, in the taxable value for the services of transportation of gas through pipeline in terms of Section 65(105) (zzz).

2. The original authority held that the marketing margin charged by the appellant from their customers is a consideration for transportation of gas and is required to be included in the gross value of taxable service. Accordingly, a Service Tax demand of Rs.54,45,99,526/- was confirmed along with equal amount of penalty under Section 78 of the Finance Act, 1994. The original authority also denied a Cenvat credit of Rs.7,49,820/- and also confirmed a demand of Rs.24,527/- on supervision charges. These demands on these two, are not contested in the present appeal.

3. The ld Counsel appearing on behalf of the appellant submitted that the entire contract is for sale of natural gas and the transportation undertaken is towards fulfillment of the said sale transaction. He drew our attention to Article 4.1(a) of the agreement dated 16.04.2008 between appellant and Indo-gulf Fertilizers. The transfer of title takes places only at the delivery point and all the risks rest with the appellant up to that point. The transportation activities undertaken by the appellant was only on account of the obligation in the sale contract. Such activity is in the nature of service to the self and not service to any other person. Thus it is the case of the appellant that the entire contract value is towards sale of goods and there is no question of any Service Tax on any part of the consideration. In any event, the ld Counsel submitted that 'marketing margin' is an element completely attributable towards cost price of gas and it has nothing to do with transportation charges. The appellant did not charge any marketing margin where they under take only transportation of gas. For sale of gas involving transportation, marketing margin is charged as per industry

practise. The collection of marketing margin is approved by the Ministry of Petroleum and Natural Gas.

4. The ld Counsel placed reliance on the decision of Hon'ble High Court in Krishak Bharti Cooperative Ltd, 2012 (27) Taxmann 304 (Guj). The High Court examining similar contract held that the entire contract is one of sale and the transportation activity undertaken is in pursuance of the obligation in the sale contract. In the appellants own case in respect of other units, the demand raised by the department of marketing margin has been dropped at the adjudication level itself.

5. The ld Counsel contested the demand on the question of limitation also. The department was aware about the activities undertaken by the appellant. The appellant did seek the opinion of the department about Service Tax liability. There is no case of suppression or willful mis-statement and as such no demand can survive for extended period and no penalty also can be imposed.

6. The ld AR supported the findings of the original authority. He submitted that the marketing margin is separately shown and cannot be considered as sale price of natural gas. The original authority examined the contracts and various other documents submitted by the appellants before arriving at his findings. It is submitted that the price of natural gas is regulated and the marketing margin is towards such charges for services rendered by the seller for marketing gases to the buyer. The marketing margin is over and above the gas price and accordingly cannot be considered as price of gas.

7. We have heard both the sides and perused the appeal records. The only point of dispute is the liability of the appellant to pay Service Tax of marketing margin indicated in their sale invoices of natural gas. The Revenue contended that marketing margin is relatable to the activity of transportation of gas. We are not in agreement with such proposition. The admitted facts are that appellants are engaged in marketing natural gas. They have pipelines for transmission of these natural gas to various destinations. They have entered into gas sales contract with their clients. A perusal of sample sales contract will indicate that the sale of such gas gets effected at the delivery point to the client. Article 4 of agreement dated !6.04.2008 clearly indicates that the gas sold and transported to the buyer pursuant to the contracts shall be delivered by the seller to the buyer at the delivery point at buyer's premises/facilities at Jagdishpur. Article 10 of the terms and conditions of the agreement gives details regarding pricing and billing. Admittedly, the appellants paid VAT on the full consideration of their invoice value. We note that while the original authority has taken of this fact, still held that as the appellant was charging and paying Service Tax on the component of transmission charges for providing transportation services to their customers, Service Tax on marketing margin also is payable. We note that without commenting on the correctness of Service Tax liability of transmission charges as discharged by the appellant, we can examine the tax liability of 'marketing margin.' Service Tax paid on transmission charges in respect of sold gases by itself cannot be the reason for holding the tax liability for marketing margin. The nature of such consideration has to be examined. Admittedly, marketing margin is an approved consideration on sale of gas, by the Ministry of Petroleum and

Natural Gas. We note that Ministry of Petroleum and Natural Gas fixes the marketing margin that should be charged from the customers by the company marketing the gas. Such marketing margin money will arise only in respect of natural gas sold. As the same is at the delivery point of the customer and transportation of gas is at the risk of the appellant, we find that there is no service element attributable to the consideration received as marketing margin. As already noted that the original authority apparently gave finding on the tax liability because the transportation charges are suffering Service Tax in respect of sale transaction. This by itself will not justify the Service Tax liability on marketing margin. There is no service by the appellant to the buyer of gas, independent to the sale transaction, as the sale transaction and the delivery point has been clearly defined in terms of the contract. The value liable to VAT is also clearly identified. The marketing margin is considered as part of sales transaction value and subject to VAT. After the change of ownership of gas, there is no consideration attributable to any service from the seller to the buyer. In other words, any services or activity prior to actual sale of gas has no two persons identifiable as service provider and service recipient. The activities and services by the appellants prior to actual sale, are for self. We also note that in respect of appellant, in others jurisdiction, proceedings were initiated to demand Service Tax on various activities undertaken with reference to the natural gas before sale. The jurisdictional authorities after examining the sale agreement, categorically held that the charges received by the appellant are part of sale of gas and cannot be subject to Service Tax. It was held that the value in dispute is included in the assessable value being part of the sale of gas and applicable VAT has been paid. Accordingly, the original authority dropped the demand for Service Tax. In this connection, we refer to adjudication order dated 24.03.2011 of the Asstt. Commissioner, Agartala and order dated 24.02.2010 of JC, Shillong. We also note that Hon'ble Gujarat High Court in Krishak Bharti Cooperative Limited (supra) dealing with income-tax case examining similar contract of the appellant, categorically held that the ownership of the gas passed on from Gail to the buyer only at the point of delivery and not before.

8. Considering the above discussion and analysis, we find the impugned order is not legally sustainable on this issue. Accordingly, the same is set-aside. The appeal is allowed with reference to Service Tax liability on the marketing margin, contested by the appellant.

(Pronounced in Court on 24.07.2017)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member(Technical)

pcs