CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 2898 of 2012
(Arising out of **Order-in-Appeal** No.26/2012 (G) CE dated 19.07.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s Bhagyanagar Gas Ltd., .. **APPELLANT**
2nd Floor, Parishram Bhavan,
APIDC Building,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND
Excise Appeal No. 25057 of 2013
(Arising out of **Order-in-Appeal** No.46/2012 (G) CE dated 08.10.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s Bhagyanagar Gas Ltd., .. **APPELLANT**
2nd Floor, Parishram Bhavan,
APIDC Building,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri Vijay Kumar, Advocate for the Appellant.
Shri V R Pavan Kumar, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30072-30073/2026

Date of Hearing:27.11.2025
Date of Decision:06.02.2026

[ORDER PER: A.K. JYOTISHI]

In appeal no. E/2898/2012, M/s Bhagyanagar Gas Ltd., (hereinafter referred to as appellant) have filed appeal against the order of the Commissioner (Appeals) dated 19.07.2012, whereby, demand of Rs. 9,19,985/- along with penalty under Rule 25, as confirmed by the

Adjudicating Authority, has been upheld. The period of demand is from January 2010 to December 2010. Similarly, in appeal no. 25057, the appellant has come in appeal against the Order-in-Original dated 08.10.2012, whereby, the demand for the period January 2011 to October 2011 as confirmed by Adjudicating Authority has been upheld by the Commissioner (Appeals), for setting aside penalty under Rule 25.

2. The issues in both these appeals are identical and these orders are relating to periodical demands raised by the Department from time to time.

3. The issue, in brief, is that Department felt that the appellant are not correctly discharging Central Excise duty on the clearance of Compressed Natural Gas (CNG) on stock transfer basis to Retail Outlets and paying the excise duty by back working of the price based on retail outlet selling price. The appellant had entered into an agreement with M/s Hindustan Petroleum Corporation Ltd., (HPCL) on 13.09.2005 for utilization of HPCL's retail outlets at Vijayawada and Hyderabad, subject to certain mutually agreed terms and conditions and had inter alia agreed to pay a commission of Rs. 1200/- PMT to HPCL/dealer for using the said facilities. The Department analysed the agreement between the appellant and HPCL, including the obligations of both the parties and felt that the goods are being sold not at factory gate but at the said retail outlet. Accordingly, relying on the provisions of Rule 7 of Central Excise Valuation Rules 2000 (Rules), the Department felt that the selling price adopted at the CNG dispensing station, installed in HPCL retail outlet, should be the normal transaction value for discharging central excise duty by the appellant. In both the cases, the Adjudicating Authority has held that the commission/trade margin of Rs. 1.20 per kg paid by the appellant to HPCL is liable to be included in the assessable value on the ground that transactions between the appellant and HPCL is not on the basis of principle to principle basis and that the price payable by the ultimate customer is

always fixed by the appellant and that the transaction between the appellant and HPCL is in the nature of stock transfer and not sale, rejecting the evidence of payment of VAT at the time of clearance from factory. Further, for arriving at the said conclusion, the nomenclature of the "commission" used in the agreement was held to be conclusive against the appellant.

4. Learned Advocate for the appellants has mainly submitted that the demand pertaining to these appeals are periodical in nature and for the earlier period i.e. from August 2005 to December 2009, the Tribunal has already decided the issue in the favour of the appellant in appeal no. E/2780/2011-Ex-DB vide order dated 29.11.2023. It was further reiterated that no other grounds/allegations were made to levy excise duty by the Department either in the course of assessment or in the course of appellate proceeding and hence no additional grounds raised by the revenue could be taken up at this stage.

5. Learned AR on the other hand is submitting that it is not disputed that HPCL and BNGL are related party, as reflected in their Balance Sheet and Financial Statements for the year 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 and hence the appellant cannot say that their ground of being related person was not brought out in the SCN earlier by the Department. He invites attention to para 3 of Show Cause Notice dated 27.08.2010, wherein, the provision of Rule 7 of Central Excise Valuation Rules and Rule 4(1)(b) have been brought out.

6. Heard both the sides and perused the records.

7. Since both the appeals having identical issue and are periodical in nature, we intend to dispose them by way of a common order.

8. We find that Learned Advocate is mainly contesting that the matter is already settled in their own case by the Tribunal's order dated 29.11.2023

and therefore, there is no ground for sustaining the orders passed by the Commissioner (Appeals). We have gone through the order dated 29.11.2023, where the identical issue for the period August 2005 to December 2009 was examined by this Tribunal and thereafter the Tribunal took into account various submissions made by the appellant including the terms and conditions of agreement and certain case laws cited by them including Mahanagar Gas Ltd., Vs CCE [2017 (348) ELT 175], Adani G/as Ltd., Vs CC, Ahmedabad in Final Order No. A/10685/2019 dated 16.04.2019. We also note that the order of the Tribunal in the case of Maha nagar Gas Ltd., referred supra, was challenged by the Department before the Hon'ble Supreme Court, and the order of the Tribunal was further upheld by the Apex Court. We also note that subsequent to the order dated 29.11.2023 of the Tribunal, a Miscellaneous Application No. E/ROM/30041/2024 for Rectification of Mistake (ROM) was filed by the Revenue, in which, inter alia, various discrepancies with reference to said order were pointed out. The Bench, vide it's order dated 28.02.2024, interalia, made certain factual corrections in the Final Order dated 29.11.2023, however, in so far as the ground raised by the Department concerning BNGL and HPCL being related parties and that the transactions between them could not be covered under Section 4(1)(a) but covered under Section 4(1)(b) read with Rule 7 of Valuation Rules, 2000, the Bench held that this aspect is fundamental to determine as to the nature of the transaction and how the assessable value is arrived at, and hence not covered within the scope of ROM. The relevant para is cited below:

> 7. The next issue as per Para 4 of the ROM is as follows - "The important issue that the Bhagyanagar Gas Ltd., and HPCL are related parties and that the transaction between them could not be covered under Section 4(1)(a) of the Central Excise Act, 1944, but covered under Section 4(1)(b) of Central Excise Act, 1944 read with Rule 7 of Valuation rules, 2000, raised by the Department/Revenue is not taken into consideration. This aspect is fundamental to determine as to the nature of transaction and how the assessable value has to be arrived at. Hence, the instant case apparently not squarely covered by the decision in the case of Mahanagar Gas Ltd., and Adani Gas Ltd., decisions of Hon'ble Tribunal".

The Tribunal felt that the issue raised in para 4 of RoM amounts to re-consideration of the main appeal itself, which is not the scope in RoM application and accordingly, RoM was allowed in part only. Therefore, even after RoM, the decision dated 29.11.2023 still stands in favour of the appellant.

9. Learned AR has mainly contested that they are related persons, which is an admitted fact and not even disputed by the appellants and this is not a new ground. We find that invocation of Rule 7 could have been made for any of grounds covered under Section 4(1)(a) of Central Excise Act 1944. In other words, if any of the condition under Section 4(1)(a) is not met, then recourse has to be taken 4(1)(b). Para 4 of SCN clearly brings out the grounds for raising demand and is cited below for ease of reference:

> "In the instant case, M/s BGL had manufactured Compressed Natural Gas at Mother Station through compressors and supply CNG from the tap-off point/Mother Station or from its line to the intake line for Online Station or into the storage cascades (mounted on light commercial vehicles) for daughter booster stations on the site to enable sale of CNG (excisable goods) to vehicles by the Retail Outlets of M/s Hindustan Petroleum Corporation Limited (in short 'M/s HPCL') in accordance with the Agreement entered into by them. Here the place of removal of the excisable goods is the CNG dispensing stations installed in M/s HPCL Retail Outlets. Therefore, as per the provisions of Rule 7 of the Central Excise (Valuation) Rules, 2000 (hereinafter referred to as "the Valuation Rules"), read with Section 4(1)(a) & (3)(c) of the Act, the value to be adopted at the CNG dispensing stations installed in M/s HPCL Retail Outlets should be the normal transaction value."

Thus, nowhere, it is being alleged that they are related persons and the allegation is that place of removal is not at factory gate but HPCL's retail outlets. Thus, this situation would not fall under Section 4(1)(a) as it is not the price at the time and place of removal, and thus 4(1)(b) has to be resorted. Learned AR is now submitting that Section 4(1)(a) is a typo error and it was actually Section 4(1)(b) and hence they were related person and the judgments relied upon will not have applicability. We do not find this assumption to be correct in view of reliance on Section 4(1)(a) read with Section 4(3)(c), which defined the "place of removal". Therefore, Department had essentially held that in this case Section 4(1)(a) is not applicable as the place of removal is not factory gate but HPCL outlet and hence value has been proposed to be derived in terms of Rule 7. The allegation in SCN did not propose to reject transaction value on the ground that they were related persons. Therefore, the ground now being proposed was not alleged in SCN and cannot be taken up.

10. We, therefore, do not find any reason to differ with the order of this Tribunal dated 29.11.2023 which covered the identical factual matrix and accordingly, following the decision of the Tribunal in their own case for previous period, we do not find any ground to uphold the orders of the Commissioner (Appeals), to the extent appealed against by the appellant.

11. Appeals are allowed.

(Order pronounced in open court on 06.02.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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