IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/87318/2016

[Arising out of Order-in-Appeal No: CD/454/M-II/2016 dated 13th June 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Mahanagar Gas Limited …***Appellant***

versus

Commissioner of Central Excise
Mumbai – II …***Respondent***

<u>*Appearance*</u>*:*

Ms Manasi Patil, Advocate for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 17/11/2017
Date of decision: 17/11/2017

ORDER NO: ____________________________

M/s Mahanagar Gas Limited, the appellant in challenge against order-in-appeal no. CD/454/M-II/2016 dated 13th June 2016 of Commissioner of Central Excise (Appeals), Mumbai Zone – II, manufactures 'compressed natural gas' which is obtained by subjecting ‘liquefied natural gas’ to a process of gasification and compression before transporting. As in all facilities handling hydrocarbons which are inflammable and combustible, safety requirements of appellant mandate presence of emergency response vehicles which the appellant sources from elsewhere; on the tax discharged thereon for the period between 1st May 2011 and 31st March 2015 credit was availed to the extent of ₹ 13,57,800. The jurisdictional service tax authorities were of the opinion that these are ‘rent-a-cab service’ which, *as per* rule 2(l) of CENVAT Credit Rules, 2004 was incorporated on 1st April 2011 was ineligible for availment. The original authority confirmed the demand along with interest and imposed penalty of ₹ 6,78,900/-, which having been confirmed in appeal, is now in challenge.

2. According to the Learned Counsel for appellant, the service availed by them is not ‘rent-a-cab service’ as the vehicles are specially configures conforming to safety requirements and not for carrying passengers. It is also contended that the contract was for hire which is materially different from renting to bring it within the ambit of ‘rent-a-cab’, an expression peculiar to a scheme in Motor Vehicles Act, 1988. Reliance is placed on the decision of the Tribunal in *Commissioner of Central Excise, Nagpur v. PB Bobde [2015 (40) STR 953 (Tri. Mumbai)]*, *Commissioner of Central Excise, Allahabad v. Surya Bhan Tripathi [2012 (25) STR 65 (Del.)]* and *Commissioner of*

Service Tax, Pune v. Nihilent Technologies Pvt Ltd [2017-TIOL-2696-CESTAT-MUM].

3. According to Learned Authorised Representative, the Tribunal in *Express Tours and Travels Pvt Ltd v. Commissioner of Central Excise, Vadodara [2006 (3) STR 664 (Tri.Mumbai)]*, has held that there is no difference between ‘hiring’ and ‘renting’ and mere use of the word ‘hiring’ would not imply exclusion from being taxed as ‘rent-a-cab’ provider.

4. It is clear that the tax on ‘rent-a-cab service’ was envisaged to subject the recipients of the scheme in Motor Vehicles Act, 1988 to tax. In *re PB Bobde*, relying upon the decision of the Hon’ble High Court of Uttarakhand in *Commissioner of Customs & Central Excise v. Sachin Malhotra & Ors [2015(37) STR 684]* that hiring of vehicles does not render provider of vehicles to be taxed as provider of ‘rent-a-cab service’. The earlier decision of the Tribunal in *re Express Tours and Travels Pvt Ltd* did not have the benefit of the judgment of the Hon’ble High Court of Uttarakhand and hence it is the decision in *re PB Bobde* which shall prevail. Furthermore, in *re Surya Bhan Tripathi*, it has been held that an ambulance service is taxable as ‘rent-a-cab service’ as ambulances are not meant for carrying passengers on hire. The emergency response vehicles are also not intended to carry passengers on hire and, even if the distinction between ‘hire’ and

‘renting’ is ignored, it is clear that the service availed by the appellant is not that of ‘rent-a-cab’. Consequently, the disallowance of CENVAT credit and the resultant recovery of duty will not sustain.

5. The impugned order is set aside and the appeal allowed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*