CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85049 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. .... Appellant
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai .... Respondent
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

WITH

Service Tax Appeal No. 85060 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. .... Appellant
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai .... Respondent
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

AND

Service Tax Appeal No. 85061 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. .... Appellant
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai .... Respondent
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

AND

Service Tax Appeal No. 85062 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. **.... Appellant**
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai **.... Respondent**
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

AND

Service Tax Appeal No. 85063 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. **.... Appellant**
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai **.... Respondent**
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

AND

Service Tax Appeal No. 85064 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. **.... Appellant**
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai **.... Respondent**
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

AND

Service Tax Appeal No. 85065 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone)

Total Oil India Pvt. Ltd. **.... Appellant**
3rd Floor, The Leela Galleria,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 059.

Versus

Commissioner of Service Tax-V, Mumbai **.... Respondent**
2nd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, BKC,
Bandra (East), Mumbai- 400 051.

APPEARANCE:

Shri S.S. Gupta, Chartered Accountant for the Appellant

Shri Aditya Pratap Singh Parihar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85909-85915/2024

Date of Hearing: 05.09.2024
Date of Decision: 05.09.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein, are engaged in the business of import and distribution of Liquified Petroleum Gas (LPG) to their customers located at various places. The customers having requirement of continuous supply of LPG, used to approach the appellants for installation of storage tanks, known as 'bullets', which are installed in the premises of the customers. The cost of storage tank and installation charges thereof in the premises of the customers are borne by the appellants. The ownership of the bullets remains with the appellants. The appellants recover lease rentals for providing the said storage tank to the customers. The *modus operandi* adopted by the appellants for installation of storage tanks at customer's site and receipt of lease rental for leasing out such storage tanks, were interpreted by the department that the appellants were providing of the taxable service under the category of 'storage and warehouse services' for the period from October, 2005 to June, 2012 and thereafter, such activities are to be considered as 'service', liable for payment of service tax. On the basis of such interpretation, the department had initiated show cause proceedings against the appellants, seeking for confirmation of the service tax demand for provision of the said taxable service. The matter arising out of the Show-Cause Notices (SCNs) (7 in numbers) were adjudicated by the learned Additional Commissioner of Service Tax, Mumbai vide order dated 09.03.2016, wherein the proposals made against the appellants were dropped. In support of dropping the proposals made in the SCNs, the learned adjudicating authority has held that for the period upto June, 2012, the appellants cannot be considered as a 'storage and warehouse keeper'; and for the period after 01.07.2012, the definition of 'service' under Section 65B(44) of the Finance Act, 1994 has excluded delivery or supply of goods, which is deemed to be a sale, within the meaning of clause (29A) of Article 366 of the Constitution of India. The department had reviewed the adjudication order dated 09.03.2016 and filed appeals before the learned Commissioner (Appeals). The appeals filed by the Revenue was disposed of by the learned Commissioner (Appeals) vide Order-in-Appeal No. MUM-SVTAX-002-APP-477-16-17 dated 20.10.2016 (for short, referred to as 'the impugned order'), in allowing the appeals in favour of the Revenue. In support of such order, the learned Commissioner (Appeals) has held that the appellants are the storage and warehouse keeper and no documentary evidences have been produced to establish transfer of right to use of storage tanks, in order to fall within the purview of section 65E(f) of the Act of 1994. Feeling aggrieved with the impugned order dated 20.10.2016, the appellants have preferred these appeals before the Tribunal.

2. Learned Consultant appearing for the appellants submitted that the appellants do not fall within the purview of storage and warehousing service and for that purpose, has referred to clause 1.3 of the contract entered into between the appellants and their customers. He has submitted that with regard to the storage tanks installed in the customer's premises, the appellants do not have any control over the LPG stored therein. He has also referred to the letter F. No. B-11/1/2002-TRU dated 01.08.2002 issued by CBEC to state that the appellants are not falling under the scope of storage and

warehousing service, clarified therein. He further submitted that the issue arising out of the present dispute, is no more *res integra,* in view of the Final Order Nos. 40418/ 2019 dated 07.03.2019 and 40719/2023 dated 25.08.2023, passed by the co-ordinate Bench of the Tribunal, in the case of the appellants themselves.

3. Learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. We have examined the sample contract dated 11.02.2000, entered into between the appellants herein (formerly known as M/s. EFL Gas India Ltd.) and M/s. Super Spinning Mills Ltd. Since, the contents of all the contracts involved in these appeals are identically worded, we have considered the contract dated 11.02.2000 for determination of the issue, whether the activities undertaken by the appellants pursuant to such contract, should be considered as rendition of service or otherwise. The relevant paragraphs in the said contract are extracted herein below:

> *"1. <u>Installation, Maintenance and rental of storage facilities</u>*
>
> *1.3 The customer will undertake the civil works necessary for the installation as well as the preparation of the storage area/yard where the Company will install the facilities. The connection to the Customer's Installation, at the boundary of the LPG storage area, will be under taken by the Company. The Customer will also undertake the civil works pertaining to construction of electrical room, small pump/vaporiser shed, fencing for the facility, internal roads etc. The Company will ensure that LPG is made available from the facility, at the tap off point inside the storage area, at the desired pressure and flow rate. The Customer will carry out the connection from the tap off point to the various equipment installed by the Customer for use of LPG including the second stage pressure regulation system.*
>
> *1.4 The fire hydrant system within the LPG storage area will be provided by the Company and connected to the main hydrant system of the Customer's plant, at a point inside the LPG storage area. The company will design the fire fighting facilities for Super Spinning Mills Ltd.*

5. <u>Regulation and Conditions of Utilization</u>

ii. The Customer takes necessary measures before the installation, to obtain all authorizations such as Environment clearance, Pollution Control, Factory Inspectorate etc. from third parties involved, to proceed with the installation and to safeguard the property rights of the Company on its material.

5.2 <u>Conditions of Utilisation</u>

iv. The Customer is responsible for the security of the materials put to its disposition and is responsible for all losses on account of security lapse.

v. The installation runs under the exclusive responsibility of the Customer who undertake not to allow any brand of LPG other than that supplied by the Company to be stored in the storage facility nor to accept any delivery of LPG of another brand or any other product for use during the tenure of this Contract without written consent from the Company."

6. On reading of the relevant clauses in the contract dated 11.02.2000, it transpires, *inter alia*, that the customers of the appellants were responsible for carrying out connection from the tap off point to various equipment's installed by the customers for use of LPG. These storage units were installed in the customer's premises and the appellants do not have any control over the LPG stored in those storage tanks. Further, LPG stored in the 'bullet' storage facility installed at the customer's premises is not under the control of the appellant and the whole responsibility of the stored LPG is with the customer. The scope and ambit of the definition of 'Storage and Warehousing Service' was clarified by the Tax Research Unit (TRU) of the Central Board of Excise and Customs (CBEC) as under:

> *"5. It has been stated that in some case a storage owner only rents the storage premises. He does not provide any service such as loading/unloading, stacking, security etc. A point has been raised as to whether service tax would be leviable in such cases. It is clarified that mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods. Essential test is whether the storage keeper provides for security of goods, stacking, loading/unloading of goods in the storage area."*

7. We find that the issue arising out of the present dispute is no more *res integra,* in view of the final orders referred (supra) by the learned Consultant for the appellants. In the case of appellants, for their Chennai unit, the co-ordinate Bench of the Tribunal vide Final Order No. 40719/2023 dated 25.08.2023 (in Appeal No.

ST/40908/2014) has set aside the order appealed against and allowed the appeal in favour of the appellants, holding as under :

> *"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 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 payment of VAT was necessary, at this stage."*

8. In the said order dated 25.08.2023, the Tribunal has referred to the earlier Final Order No. 40418/2019 dated 07.03.2019 and has stated that no appeal has been preferred against such order by the Revenue. Thus, it is manifest that the issue arising out of the present dispute has attained finality. Therefore, we are of the view that the adjudged demands confirmed on the appellants cannot be sustained on merits.

9. In view of the foregoing discussions, we do not find any merits in the impugned order dated 20.10.2016 passed by the learned Commissioner (Appeals), in confirming the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Operative part of the Order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sm