CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 85167 of 2016

(Arising out of Order-in-Appeal No. CD-822/823-M-II-2015 dated 12.08.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Mahanagar Gas Ltd. **Appellant**
MGL House,
G 33, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051.

Vs.

Commissioner of Central Excise, Mumbai-II **Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

AND

Excise Appeal No. 85168 of 2016

(Arising out of Order-in-Appeal No. CD-822/823-M-II-2015 dated 12.08.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Mahanagar Gas Ltd. **Appellant**
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Vs.

Commissioner of Central Excise, Mumbai-II **Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

Appearance:

Shri Viraj Reshamwala, Advocate, for the Appellant
Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 19.08.2024
Date of Decision: 16.10.2024

FINAL ORDER NO. 86221-86222/2024

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since they are arising out of common impugned order-in-appeal dated 12.08.2015.

2. Brief facts of the case are that the appellant is engaged in manufacture and distribution of compressed natural gas (CNG) falling under Tariff Item No.27112100 of First Schedule to Central Excise Tariff Act, 1985. Appellant is registered with Central Excise and paying central excise duty. During the course of EA 2000 audit conducted by officers of Revenue during the months of December 2012 to January 2013, it was noticed by the officers of Revenue that the appellant had entered into an agreement dated 20.01.2009 with Navi Mumbai Municipal Transport for supply and sale of CNG through compressors and dispensers supplied by the appellant and installed in the depot premises of Navi Mumbai Municipal Transport and that in terms of the said agreement, a trade discount of Rs.0.17 per kg. for the period from August 2010 to November 2010 and the same of Rs.0.26 per kg. for the period December 2010 to June 2013 was to be allowed by the appellant on sale of CNG to Navi Mumbai Municipal Transport. It appeared to Revenue that the said trade discount is an additional consideration flowing from Navi Mumbai Municipal Transport to the appellant for establishing outlets in the premises of Navi Mumbai Municipal Transport and, therefore, it appeared to Revenue that in terms of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the said discount provided by the appellant to Navi Mumbai Municipal Transport was required to be added to the assessable value to determine central excise duty payable by the appellant. With the said contentions, appellant was issued with a show cause notice dated 08.04.2014 demanding additional central excise duty of Rs.4,07,862/-. Further there were proposals for collecting interest and imposing penalty. The said demand was for the period from August 2010 to June 2013. The said show cause notice was replied by the appellant through their reply dated 05.06.2014 wherein *inter alia* the appellant submitted to the original adjudicating authority that the appellant had taken the land from Navi Mumbai Municipal Transport on sublease for the purpose of setting up of outlets and they were paying monthly lease rent of Rs.59,584/- as per clause 2.1 of Sublease Agreement dated 11.03.2009 and the entire infrastructure and equipment for dispensation of CNG were set up by the appellant at their own cost. They also

enclosed a copy of the said agreement dated 11.03.2009 with the said reply and contended that both the transactions are independent of each other and discount offered by the appellant was trade discount and in lieu of use of land of Navi Mumbai Municipal Transport, appellant was paying monthly lease rent and, therefore, demand is not sustainable. The said show cause notice was adjudicated through order-in-original dated 22.07.2014. Learned original authority has not taken into consideration the said sublease agreement dated 11.03.2009 and taken into consideration only the agreement dated 20.01.2009 and confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). For subsequent period from July 2013 to March 2014, similarly worded show cause notice dated 11.06.2014 was issued to the appellant demanding central excise duty of Rs.69,602/- from the appellant on the same grounds. The said show cause notice dated 11.06.2014 was contested by the appellant on the same grounds similar to earlier show cause notice and the said show cause notice dated 11.06.2014 was decided by original authority through another order dated 22.07.2014 through which demand of central excise duty of Rs.69,602/- was confirmed with imposition of penalty of Rs.15,000/-. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Both the appeals were decided through a common order-in-appeal dated 12.08.2015 by learned Commissioner (Appeals) who did not interfere through his impugned order with the original orders passed, both dated 22.07.2014. Aggrieved by the said order-in-appeal, appellant is before this Tribunal.

3. Learned counsel for the appellant has submitted that the appellant had taken land on sublease basis from Navi Mumbai Municipal Transport for the purpose of setting up of Mahanagar Gas Ltd. outlets for a monthly lease rent of Rs.59,584/- as per clause 2.1 of sublease agreement dated 11.03.2009 and the entire infrastructure and equipment have been set up by the appellant at their own cost and, therefore, the allegation that additional consideration in the form of space and civil structure has been provided by Navi Mumbai Municipal Transport in its

premises for establishing and running Mahanagar Gas Ltd. outlets is factually incorrect as the appellant is paying monthly lease rent to Navi Mumbai Municipal Transport for using the said premises for establishing and running outlets. Learned counsel has further submitted that, therefore, there is no case for allegation of additional consideration and the price charged by Navi Mumbai Municipal Transport was the sole consideration for sale of CNG and, therefore, the trade discount given by the appellant cannot be considered as additional consideration and the same does not merit to be added to the transaction value in terms of Section 4(1)(a) of Central Excise Act, 1944. Learned counsel has further relied on various decisions of this Tribunal and Hon'ble Supreme Court on similar issue, which are as follows:-

i) Mahanagar Gas Ltd. vs. Commissioner of Central Excise, Mumbai-V reported at 2017 (348) ELT 175 (Tri.-Mumbai)

ii) Commissioner vs. Mahanagar Gas Ltd. reported at 2018 (360) ELT A187 (SC)

iii) Tribunal's ROM order No. M/93983-93984/16/EB dated 22.11.2016 in the case of Mahanagar Gas Ltd.

iv) Commissioner vs. Mahanagar Gas Ltd. reported at 2018 (360) ELT A133 (SC)

v) Commissioner of Central Excise, Mumbai-V vs. Mahanagar Gas Ltd. reported at 2019-TIOL-3074-CESTAT-MUM

vi) Tribunal's final order No. 85260-85261/2024 dated 05.03.2024 in the case of Mahanagar Gas Ltd.

vii) Tribunal's final order No. 85501/2024 dated 15.05.2024 in the case of Mahanagar Gas Ltd.

viii) Tribunal's final order No. 85576-85580/2024 dated 11.06.2024 in the case of Mahanagar Gas Ltd.

4. Heard the learned AR. Learned AR has reiterated the findings of learned Commissioner (Appeals).

5. We have carefully gone through the records of the case, submissions made and the case laws relied upon by the appellant. We find that the main dispute in the present case is whether the trade discount of Rs.01.7 per kg. or Rs.0.26 per kg. offered by the appellant to Navi Mumbai Municipal Transport qualifies to be additional consideration flowing from purchaser to the appellant in view of the fact that the appellant has established their dispensing unit in the land belonging to the said purchaser. We note that before the original authority, the appellant had submitted that for the purpose of setting up of outlets, the appellant had entered into a sublease agreement with the purchaser on 11.03.2009 and as per clause 2.1 of the said sublease agreement, the appellant was required to pay monthly lease rent of Rs.59,584/- to the purchaser of the goods dispensed by the appellant. Therefore, in our opinion, both the transactions are independent of each other. For clarity we wish to reiterate our finding that for use of land, appellant is paying lease rent and, therefore, use of land by the appellant is not influencing the terms of sale between the appellant and the purchaser Navi Mumbai Municipal Transport. We wish to examine this factual position in the light of the ruling of Hon'ble Supreme Court relied upon by learned counsel for the appellant, in the case of Commissioner vs. Mahanagar Gas Ltd. reported at 2018 (360) ELT A187 (SC). For the sake of ready reference, we reproduce below the said citation:-

"The Supreme Court Bench comprising Hon'ble Mr. Justice Ranjan Gogoi and Hon'ble Mr. Justice Navin Sinha on 3-11-2017 after condoning the delay dismissed the Civil Appeal Diary No. 29175 of 2017 with I.A. Nos. 105002-105004 of 2017 filed by Commissioner of Central Excise, Mumbai-II against the CESTAT Final Order Nos. A/89319-89329/2016-WZB/EB, dated 24-8-2016 as reported in 2017 (348) E.L.T. 175 (Tri.-Mumbai) (Mahanagar Gas Ltd. v. Commissioner). While dismissing the appeals, the Supreme Court passed the following order :

"1. Delay condoned.

2. We have heard the Learned Counsel for the appellant and perused the relevant material.

3. We find no merit in the present appeals. Admission is refused and the civil appeals are, accordingly, dismissed."

The Appellate Tribunal in its impugned order had held that since Compressed Natural Gas (CNG) supplied to Oil Marketing Companies (OMCs) on 'principal to principal' basis and there being no mutuality of interest between them, trade discount/commission given to such OMCs was not indudible in the assessable value especially when there was no evidence of flow of additional consideration from OMCs to the assessee. The contention of the Department that the price charged on sale of CNG through the assessee's own outlets or through the outlets of their agents, should be taken into consideration for valuation of goods supplied to OMCs, was not acceptable in view of the provisions of Section 4(1)(a) of the Central Excise Act, 1944 which permits different transaction value for assessment purposes so long as those are based on purely commercial consideration and there is no mutuality of interest between the buyer and seller."

We note from the above stated ruling by Hon'ble Supreme Court that when there is no evidence of flow of additional consideration, the assessable value arrived at after allowing trade discount is as per the provisions of Section 4(1)(a) of Central Excise Act, 1944. In the present case, for use of land appellant is separately paying lease rent. Therefore, there is no additional consideration flowing to the appellant from the purchaser of the goods. We, therefore, following the ruling by Hon'ble Supreme Court in the case of Commissioner vs. Mahanagar Gas Ltd. (supra), hold that the discount offered by the appellant to Navi Mumbai Municipal Transport cannot be treated as additional consideration and cannot be added to arrive at assessable value.

6. We, therefore, set aside the impugned order and allow both the appeals.

(Order pronounced in the open court on 16.10.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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