CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 86042 of 2025
In
Excise Appeal No. 86205 of 2016

(Arising out of Order-in-Appeal No. CD/120/M-II/2016 dated 15.02.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai.)

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

Versus

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

With

Excise Miscellaneous Application No. 86050 of 2025
In
Excise Appeal No. 86208 of 2016

(Arising out of Order-in-Appeal No. CD/129/M-II/2016 dated 19.02.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai.)

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

Versus

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

APPEARANCE:

Shri Sachin Chitnis, Advocate for the Appellant

Shri Ranjan Kumar, 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/86120-86121/2025

Date of Hearing: 09.07.2025

Date of Decision: 09.07.2025

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Revenue has filed these miscellaneous applications, praying for amendment of the cause title in the appeal filed by the appellants. Revenue has stated that the Respondent's name and address mentioned in the appeal memorandum as "*Commissioner of Central Excise, Mumbai-II*" may be changed to "*Commissioner of Central Goods Service Tax & Central Excise, Mumbai East Commissionerate, 9th Floor, Lotus Info Centre, Station Road, Parel (East), Mumbai - 400012*". Prayer made by Revenue is considered and accordingly, Registry is directed to incorporate the changed name and address in the appeal records. Miscellaneous applications stand disposed of.

3. Briefly stated, the facts of the case are that the appellants herein, are engaged in the manufacture of Compressed Natural Gas (CNG). During the disputed period, the appellants had entered into a contract with M/s. Thane Municipal Transport (TMT) for supply and sale of CNG, through compressors/dispensers of the appellants, which were installed in the depot premises of M/s. TMT. For carrying out such activity, M/s. TMT had provided space and other civil infrastructure within their premises to the appellants. In terms of the agreement, a trade discount of 60 paise per kg. was provided on sale of CNG. Since, the selling price of CNG by the appellants fixed for M/s. TMT is lesser (owing to the reasons of providing the discount), than the price at which CNG was sold by the appellants to others, the department had interpreted that such trade discount should be considered as an additional consideration, on which the appellants should be liable to pay Central Excise duty, in terms of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000. Accordingly, the proceedings were initiated by the department against the appellants, seeking for recovery of the Central Excise duty liability. The matter was adjudicated vide order dated 29.05.2015, wherein the original authority had confirmed the proposals made in the Show Cause Notice (SCN). On appeal against the said original order dated 29.05.2015, the learned Commissioner (Appeals) vide the impugned order dated 15.02.2016 has upheld the confirmation of adjudged demands and rejected the appeals. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

4. We find that the issue arising out of the present dispute, whether trade discount should form part of the transaction value, for the purpose of payment of Central Excise duty, is no more *res integra* in view of various orders passed by the Co-ordinate Benches of the Tribunal. In the Final Order No. 86143-86144/2024 dated 03.10.2024, the order passed by the department for the previous period, in the case of the appellants themselves, the Tribunal has allowed the appeal, holding that trade discount cannot form the part of transaction value. While passing the order dated 03.10.2024, the Tribunal has referred to the earlier order passed in the self-same appellants own case, reported in 2017 (348) E.L.T. 175 (Tri.-Mumbai). The relevant paragraphs are extracted hereinbelow:

> ***"5.1*** *We find that the common issue involved in the above appeals is whether price charged for sale of CNG to OMCs can be considered as transaction value for the purpose of payment of duty under Section 4(1)(a) of CEA.*
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> ***5.2*** *We find that entire period covered in all the appeals is post July, 2000, governed by amended Section 4. The new Section 4 essentially seeks to accept different transaction value, which may be charged by the assessee to different customers, for assessment purposes, so long as those are based purely on commercial consideration, where buyer and the seller are not related and price is the sole consideration for sale at the time and place of delivery. Thus, it enables valuation of goods for excise purpose on the value charged as per normal commercial practices, rather than looking for a notionally determined value which existed prior to amendment of Section 4 in 2000. The Adjudicating Authority has confirmed the demand on the differential value between MGL's sales price from their own outlets and/or the outlets of PPs and the sales price of MGL to OMCs, treating the difference as the charges for the services rendered by OMCs to MGL and the Department also claims that sale is not taking place between the appellants and OMCs. We have perused the copies of Central Excise invoices issued by MGL to OMCs on daily basis for dispensing CNG from 6.00 am to 6.00 am showing the quantity supplied, assessable value, duty paid/payable, etc. We also find that there are joint tickets prepared outlet-cum-party-wise showing the sale period starting at 0600 hrs. on preceding day and ending at 0600 hrs. on the succeeding day and also show the quantity of CNG dispensed with opening reading, closing reading, total reading and total quantity supplied. Such joint-tickets are also signed by both parties, i.e. appellants and OMCs. Thereafter, the appellants are raising tax invoices upon OMCs on monthly basis with specific business days within which payment has to be made by OMCs and for any delay in payment, interest is also payable by OMCs. The appellants have paid VAT/sales tax on their sale of CNG to OMCs, as evidenced from the invoices. Further,*

sales invoices of OMCs for resale of CNG to ultimate buyers, VAT/sales tax is paid by them on their sales price. In nutshell, the appellants are paying VAT on its sales price to OMCs and OMCs are also paying VAT on their sales price to their customers. This clearly evidences that the AR's arguments that sale is not taking place between appellants and OMCs and also it is a paper transaction is incorrect and not supported by any evidence on record. It is noteworthy that this Tribunal in the case of BPCL/HPCL (supra), wherein the service tax demanded on the very same amount received by OMCs from MGL, claiming such amount as commission paid for rendering of services under Business Auxiliary Service for marketing of CNG manufactured by the appellants, has been set aside holding that the OMCs themselves are buying the goods from MGL and MGL is charging VAT/sales tax while selling the CNG to BPCL/HPCL and BPCL/HPCL are also paying VAT/sales tax on the entire value, including the so-called commission and, hence, the transaction between them is sale/purchase transaction and VAT/sales tax has been paid at both ends the same cannot be considered as service contracts.

5.3 *We find that the appellants' contention that OMCs, being bulk buyers, have been given higher discount also needs to be accepted in the absence of any allegation/substantiation of mutuality of interest between appellants and OMCs, as both are independent entities. We also find that there is a distinct difference in the transactions of the appellants with PPs, wherein MGL supply CNG through the outlets owned and operated by PPs and CNG is directly supplied by PPs to the ultimate consumers/vehicles users from their outlets for and on behalf of MGL, under the invoices/bills/cash memos of MGL and the price charged in those bills/invoices/cash memos are the retail sales price or maximum recommended price determined by MGL, from time to time. In a true sense, the customers/vehicle users at the outlets of PPs are buying CNG from MGL, through the PPs. The privity of contract is between MGL and those buyers and those sales are directly recorded in the Books of Account of MGL and not in the Books of PPs, as there is no sale and purchase of CNG by PPs and PPs act only as an agent of MGL on commission basis. The entire sales proceeds are remitted by PPs to MGL on daily basis. The contracts between MGL and PPs are that of "principal" and "agent" as the PPs are merely service providers and not buyers of CNG from MGL. Their obligation under the contracts is merely to provide assistance for supply/sale of CNG to the vehicles by MGL. For acting as an agent of MGL, PPs get specified service charges on "per kg" basis of the CNG sold by them on behalf of MGL. Since the PPs are acting as agents of MGL for supply of CNG, PPs consider their activity as Business Auxiliary Service and pay service tax on the commission received from MGL. We find that sale of CNG by the appellants to OMCs is on principal-to-principal basis, which is clear from various terms/covenants of the agreements between MGL and OMCs, i.e. retail sales price is the price at which CNG is to be sold to vehicles by the OMC as communicated by MGL to OMCs, from time-to-time; OMC shall sell CNG at the outlets situated at the site; Retail Price of CNG shall* *be fixed by MGL and the OMCs shall sell the CNG only at the retail price communicated by MGL to OMCs, from time-to-time; OMCs shall pay to MGL the retail price as reduced by profit margin/commission/discount; MGL shall, before 5th of every month, send to OMCs an invoice for the quantity of CNG sold by OMCs during the preceding month. Such invoices shall be based on the meter reading on CNG dispensers jointly taken by MGL and OMCs; OMCs shall pay to MGL the invoice value for CNG sold as stated in the invoice within ten days from the date of invoices; it is specifically stated in the agreements between OMCs and MGL that during the term of the agreements OMCs shall not hold out to be as agents of MGL and it is clearly understood that this agreement is on principal-to-principal basis and MGL shall not be liable for any of the acts of omission/commission of OMCs. We also find from record that when CNG is supplied by MGL through PPs, there is no sale between MGL and PPs, as the sale takes place between MGL and the ultimate customers/vehicle users and the PPs act as agents of MGL; that the PPs were/are issuing cash memos/invoices/bills of MGL, when they supply CNG to customers/vehicle owners; that the PPs are acting as agents of MGL, for which they get specified service charges and the PPs are paying service tax on such amount; that, in contrast, as far as OMCs are concerned, sale of CNG takes place between MGL and OMCs at OMCs outlets and OMCs issue their cash memos/bills/invoices to their customers/vehicle owners and MGL do not have any role to play in such transactions; that commission paid to PPs was Rs. 1.20/kg, Rs. 1.74/kg, Rs. 1.90/kg and Rs. 2.45/kg during different periods, whereas discount given to OMCs was Rs. 1.20/kg, Rs. 1.40/kg, Rs. 2.42/kg, Rs. 2.62/kg and Rs. 2.74/kg during different periods. From the above discussions, we are of the view that the appellants' case is squarely covered under new Section 4(1)(a) of CEA which essentially permit different transaction values, unlike normal sales price existed prior to 1-7-2000, which has also been explained by C.B.E. & C., vide its Circular No. 354/81/2000-TRU, dated 30-6-2000 in Para 5.*

5.4 *We also find that the agreements between the appellants and OMCs were entered into in 1998 or 1999, when there was no levy on CNG, which came into effect only from 1-3-2001 and, hence, the appellants could not have thought that using certain expressions like commission/trade margin, etc. would create hassle at a future date from Central Excise point of view and also there would not have been any inducement to use any expression in the agreement with an intent to evade payment duty. The nomenclature like commission/profit margin used in the agreements when read with invoices raised by the appellants upon OMCs, it is clear that it was the sale transaction on principal-to-principal basis and, hence, as held by Hon'ble Supreme Court in Perfect Circle Victor - 1992 (60) E.L.T. 676 (S.C.) and D.C.M. Textiles - 2006 (195) E.L.T. 129 (S.C.), etc. trade discount allowed by whatever name called is an admissible deduction and the appellants are not liable to include the same for the purpose of payment of duty. In the present case, the appellants have charged mutually agreed price, which is transaction value between* *the appellants and OMCs in the normal course of their business for sale of CNG and no additional consideration, whatsoever, flows from OMCs to MGL. Further, by virtue of its technical necessity, the supply of CNG could have been done in the manner in which the appellants have done, as natural gas by the process of compression amounts to manufacture for the purpose of marketing as CNG for use as fuel which has been done at the time of dispensing. Inasmuch as NG is compressed at 210 bars pressure in Mother Stations and Online Stations and got stored in stationary cascades and dispensed by bringing the pressure to 200 bars to vehicles. Likewise, NG is compressed and filled at 230 bars pressure in cascades of cylinders mounted on light motor vehicles and transported to Daughter Booster Stations, wherein the same is dispensed by recompressing to the pressure at 200 bars pressure. Therefore, considering the technical necessity of the product, this was the only methodology which anybody could have adopted. Since the activity of manufacture takes place at each of the compression station the appellants are having centralized registration for each of the locations, which are the factories of MGL."*

5. We find that by relying upon the said order dated 24.08.2016 (supra), this Tribunal in the case of the appellants, for the subsequent period has also dropped the demands confirmed against them. In view of the fact that the issue arising out of the present dispute is no more open for any debate in view of various orders passed by the Tribunal in the case of the appellants themselves for the earlier period, we are of the considered opinion that different interpretations cannot be placed to decide the appeal differently. Therefore, the impugned orders, upholding confirmation of the adjudged demands on the appellants are set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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