CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

EXCISE MISCELLANEOUS APPLICATION NO.86965 OF 2025
IN
EXCISE APPEAL NO. 87145 OF 2016

[Arising out of Order-in-Appeal No.CD/497/M-II/ 2016 dated 08.07.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II]

MAHANAGAR GAS LTD
MGL House, G 33, Bandra-Kurla Complex, Bandra (E), Mumbai-400051 **Appellant**

Vs.

COMMISSIONER OF CENTRAL EXCISE,MUMBAI-II
Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400012 **Respondent**

Appearance:
Present for the Appellant: Shri Viraj Reshamwala, Advocate
Present for the Respondent: Shri Ranjan Kumar (AR)

CORAM:
HON'BLE MR.AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.85618/2026

Date of Hearing: **01.04.2026**

Date of Decision: **30.04.2026**

PER:RAJEEV TANDON

The present appeal is directed against the Order-in-Appeal dated 11.07.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai, whereby the learned Commissioner (Appeals) has partly allowed the appeal by setting aside the penalty, while upholding the demand of duty along with interest.

2. The facts leading to the filing of the Appeal are stated in brief as follows. The appellant-M/s. Mahanagar Gas Ltd., is engaged in the manufacture and supply of CNG (Compressed Natural Gas). The appellant entered into an agreement with Navi Mumbai Municipal Transport (hereinafter referred to as "NMMT") for supply of CNG through dispensing units installed at the depot premises of NMMT. Under the said arrangement, a trade discount of Rs. 0.17 per kg. was extended to NMMT, resulting in a lower sale price as compared to the price charged to other customers for selling CNG through appellant's other outlets.

3. The department formed a view that the said trade discount was not a genuine discount but an "*additional consideration*" for the appellant, on the premise that NMMT had provided depot premises and other civil infrastructure free of cost to the appellant for setting up the CNG dispensing facility and the same has to be added in the assessable value. Invoking Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, a show cause notice dated 20.04.2015 was issued proposing recovery of differential duty amounting to Rs. 75,959/- for the period April 2014 to January 2015, along with interest and penalty. The said demand alongwith interest and penalty was confirmed by the adjudicating authority. In Appeal, learned Commissioner (Appeals) set aside the penalty but upheld the duty demand, leading to the filing of this Appeal.

4. We have carefully considered the rival submissions, perused the records including the synopsis/written submissions and the case laws placed on record. The core issue that arises

for determination is whether the trade discount extended by the appellant to NMMT can be treated as an "additional consideration" in terms of Rule 6 of the Valuation Rules, thereby warranting inclusion in the assessable value?

5. The entire case of the department rests on the assumption that NMMT provided its premises and infrastructure free of cost to the appellant, which is an additional consideration to the appellant. The assumption carried by the department becomes more clear from the finding recorded by the learned Commissioner while upholding the duty demand, which is as under:-

> "*8. ……..In the instant case, it is the NMMT which is paying all the taxes for maintaining th premises where CNG filling station is set up; it is the NMMT which is incurring expenditure for providing water and other facilities. NMMT is incurring all this expenditure in connection with buying CNG from MGL. The cost of these facilities is nothing but additional consideration to MGL in the guise of facilities. Hence the cost of these facilities has to be added in the price being charged by MGL….*"

6. However, from the records placed before us, it emerges that this foundational assumption is factually incorrect. The appellant has categorically demonstrated that the land in question was not provided free of cost, but was taken on sub-lease from NMMT under a sub-lease agreement dated 11.03.2009, for setting up its outlet for a consideration of monthly lease rent of Rs. 59,584/-as mentioned in clause 2.1 of the sub-lease agreement. Further, the appellant has incurred the entire expenditure towards installation of plant, machinery, and dispensing infrastructure.

7. The department has not brought on record any cogent evidence to rebut these factual assertions. In the absence of any material to establish that any facility was provided free of cost, the very basis for invoking Rule 6 collapses resultantly the demand raised and confirmed by the authorities below fails.

8. It is a settled position of law that for invoking the concept of "additional consideration", there must be a clear and demonstrable flow of consideration, whether direct or indirect, from the buyer to the assessee, which has a nexus with the price of the excisable goods. In the present case, no such flow has been established.

9. On the contrary, the price charged to NMMT is a negotiated commercial price, and the discount extended is in the nature of a trade discount. Merely because a lower price is charged to a bulk buyer cannot, by itself, lead to the conclusion that the differential represents additional consideration.

10. We also find that similar trade discounts were extended by the appellant to other bulk consumers such as BEST and TMT, and in those cases also, on identical issue the Tribunal has held that such discounts are admissible and cannot be loaded onto the assessable value in the absence of any additional consideration.

11. Significantly, in the appellant's own case, on identical facts involving supply of CNG to NMMT, this Tribunal in *Mahanagar Gas Ltd. vs. CCE, Mumbai-II vide Final Order No. 86221-*

86222/2024 dated 16.10.2024, while allowing the appeal filed by *Mahanagar Gas Ltd.* has categorically held that where lease rent is being paid separately for use of land and no additional benefit flows from the buyer, the discount cannot be treated as additional consideration. The relevant paragraph of the said decision are as under:-

> *"xxx xxx xxx*
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> *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:-*
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> "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 :
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> "1. Delay condoned.

> *2.* We have heard the Learned Counsel for the appellant and perused the relevant material.
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> *3.* We find no merit in the present appeals. Admission is refused and the civil appeals are, accordingly, dismissed."
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> 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.
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> 6. We, therefore, set aside the impugned order and allow both the appeals."

12. In view of the above binding precedent on identical facts, the issue involved herein is no longer *res integra* and is squarely covered in favour of the appellant.

13. In light of the foregoing discussion, we find that the allegation of additional consideration is founded on incorrect facts and there is no evidence of any flow of additional

consideration from NMMT to the appellant. The trade discount extended by the appellant is a legitimate commercial discount. Accordingly, the impugned order upholding the demand of duty and interest is not sustainable in law and is hereby set aside. The appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 30.04.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)