CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86836 of 2015

[Arising out of Order-in-Appeal No. CD/524/M-II/2015 dated 03.06.2015 passed by the Commissioner of Central Excise, (Appeals.)]

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

Versus

Commissioner of Central Excise, Mumbai-II **.... Respondent**
3rd Floor, Utpad Shulk Bhavan, Plot No. C-24,
Sector-E, Bandra Kurla Complex,
Bandra (East), Mumbai- 400 051.

Appearance:

Ms Payal Nahar, Advocate for the Appellant

Shri Rajiv Ranjan, 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/85501/2024

Date of Hearing: 15.05.2024

Date of Decision: 15.05.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case that the appellants have entered into a contract with Brihanmumbai Electric Supply and Transport (BEST) for supply and sale of Compressed Natural Gas (CNG) through compressors / dispensers supplied by the appellants. The said equipment was installed in the depot belonging to BEST with certain prescribed pressure. For the said purpose, BEST had provided space and other civil structure within their premises for establishing the outlets. In terms of the agreement dated 21.12.2006 as amended, the trade discount at different rates per kg. was offered on sale of CNG. The selling rate of CNG fixed for BEST is lesser than the selling rate of CNG sold from the appellant's outlets to other buyers.

The *modus operandi* adopted by the appellants was interpreted by the Department that in the name of 'trade discount', such additional consideration was received by the appellants and since, other civil structures were provided by the buyer i.e., BEST free of cost, the value of such additional consideration shall be included in the assessable value in terms of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as such, the appellants are liable to pay central excise duty on such consideration. On the basis of such analysis by the department, show cause proceedings were initiated, seeking for confirmation of the duty demand on the appellants. The Show Cause Notice (SCN) dated 17.02.2014 issued in this regard was adjudicated vide Original Order dated 23.06.2014, wherein central excise duty demand of Rs.12,62,887/- was confirmed along with interest on the appellants. On appeal against the said original order, the learned Commissioner (Appeals) vide the impugned order dated 03.06.2015 has upheld the original order and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the records of the case.

3. The issue involved in this appeal for consideration by the Tribunal is, whether trade discount offered by the appellants to BEST, being a bulk buyer, can be treated as an additional consideration for sale of CNG, in an eventuality, where due to technical necessity of the product, the compressors or dispensers are to be installed at the premises of BEST for supply of CNG to their buses and outside vehicles.

4. The period of dispute involved in the present appeal relates to February, 2013 to December, 2013. The valuation provisions contained in section 4 of the Central Excise Act, 1944 was substituted by Finance Act, 2000, w.e.f. 01.07.2000. The said amended provisions have considered different transaction values for the price charged to different customers for assessment purpose, subject to the condition that such transactions are purely based on commercial consideration, buyer and seller are not related to each other and the price charged is the sole consideration for such sale at the time and

place of delivery. We find that the department had considered the price charged by the appellants to other customers as the transaction value for the supplies made to BEST. It is not the case of Revenue that the appellants got something more, over and above the agreed price for supply of the CNG to BEST. It is also not the case of Revenue that the appellants are related to BEST in any manner. Further, no evidence is forthcoming that the discount offered by the appellants to BEST was in lieu of the infrastructural facilities extended to them. Hence, the transaction value should be considered as the price at which the CNG were supplied by the appellants to BEST and such price should be considered as the value for the purpose of assessment and discharge of central excise duty liability.

5. We find that the issue arising out of 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 earlier period, holding that deduction of trade discount from assessable value is admissible on sale transactions. The relevant paragraph recorded in the order dated 30.09.2019 [2019 – TIOL – 3074 – CESTAT MUM] is quoted herein below:

> *"7. Heard both sides and perused the records. The short issue involved in the present appeal for determination is whether the discount passed by the respondent @0.70 per kg to BEST during the relevant period June 2009 to April 2010 is admissible or be added to the value as an additional consideration for the CNG sold. It is not in dispute that by an agreement dated 21.12.2006 with BEST, the respondent agreed to sale/supply CNG at various bus depots of BEST and it is also agreed that necessary infrastructure was to be provided by BEST. Also, there was a clause in the said agreement which enabled the respondent to sale CNG to outside vehicles on the terms and conditions to be mutually agreed between the parties. Pursuant to the said clause, the respondent entered into a separate agreement with BEST on 12th May 2008. Under the later agreement, the respondent was allowed to sale CNG to outside vehicles from the premises of BEST, however, on payment of a fixed fee of ₹ 35,000/- and variable fees of Rs.0.60 per kg of CNG sold. The revenue's contention is that the revise discount @0.70/- per kg of CNG passed during the period June 2009 to April*

2010 to BEST is not admissible being an additional consideration received from BEST in lieu of facilities to dispense the CNG extended by BEST to the respondent. We do not find merit in the allegation of the Department in as much by the previous agreement dated 21.12.2006, both sides agreed that the respondent would pass a discount @0.60/-to BEST, which the Department never disputed even though under the said agreement necessary infrastructure for dispensing CNG at the premises of BEST had been provided to the respondent by BEST. The revenue disputed the correctness of the said discount only after the agreement dated 12.05.2008 was executed allowing the respondent to sale CNG to outside vehicles. In our opinion, the second agreement dated 12th May 2008 is a separate transaction between the respondent and BEST for allowing outside vehicles to fill CNG at various filling stations installed by the respondent in the premises of BEST on payment of certain fees by the respondent to BEST. No investigation has been conducted by the revenue to establish the allegation that the discount offered by the respondent to BEST was in lieu of all infrastructural facilities extended by BEST to the respondent. Analyzing the evidences the Ld. Commissioner (Appeals) recorded its finding on the issue as follows: -

"16. I find that the respondent in the impugned order, at para 39, observed that – 'the cumulative reading of the above facts, showed that the short charging of Rs.0.70 per kg from the MRP or retail sale price of the CNG by the appellants to BEST was not a case of legitimate trade discount and that additional consideration, agreed, inter se, under the agreement dated 21.12.2006, flowed to them', and then at para 42, further held that – 'Thus, came to the fore, the agreement dated 21.12.2006, whereby the true nature of the alleged stated discount of Rs.0.70 per kg in these sales to the BEST was found to be actually a case of corresponding the back of the additional consideration, at least equivalent to the said amounts, in the form of the facilities extended under the agreement dated 21.12.2006, by the BEST to the appellants, free of cost'. It appear from the reading of these lines that it has been implied that – (i) BEST provided certain facilities for setting up CNG stations in their premises, (ii) as per agreement dated 21.12.2006, these were provided free of cost, (iii) however, actually for this, the appellants allowed a trade discount of Rs.0.70 per

kg to BEST. It is not clear whether the respondent meant the giving of discount as a flow back of additional consideration or the providing of facilities by BEST was an additional consideration, received by the appellants. Taking up the 'conclusions' of the resp0ondent the discussion, I find that as already discussed above the agreement dated 21.12.20006, was for setting up dispensing stations, within BEST premises, for filling up BEST vehicles exclusively, for which the facilities were provided by BEST< free of cost. Even accepting the department's stand for academic discussion, that this given discount was, actually a 'financial flow back' received (?) by the appellant, it can be seen that for receiving the facilities 'free of cost', they have given a discount in the sale price, thereby accepting a lesser sale amount, which mean there is a 'quid pro quo', and it cannot be said that the facilities were received 'free of cost'. This argument, therefore, does not stand. As far as the situation after 12.5.2008 is concerned, I find that the agreement dated 12.5.2008, clearly provides for payment of fixed and variable fees by the appellants to BEST, since in this case, the supplies were to outside vehicles. 'other than of BEST', and hence the question of receiving facilities from BEST, free of cost, does not arise. At the most, the department could have had some basis if they had examined the possibility of considering the amounts received by the appellants by way of the fixed and variable fees, from BEST, as flow back, though, in view of the agreement dated 12.5.2008, it also appears to be legitimate commercial transaction."

We do not find any reason to interfere with the aforesaid finding of the Commissioner (Appeals) as in their appeal before this forum also, no contrary evidence has been placed by revenue. Consequently, the impugned Order is upheld and the revenue's appeal being devoid of merit, accordingly dismissed."

6. Further, on the similar issue in the case of the appellants, the Final order dated 24.08.2016 passed by the Tribunal was appealed against by Revenue before the Hon'ble Supreme Court and the Civil Appeal was dismissed at the admission stage by the Hon'ble Court vide judgement dated 03.11.2017. Thus, the issue arising out of the present dispute is not open for any further deliberation.

7. Therefore, we do not find any merits in the impugned order dated 03.06.2015, insofar as it has upheld confirmation of the adjudged demands on the appellants. Accordingly, the same is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM