# केंद्रीय कर आयुक्त (अपील)

**O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,**

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

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रजिस्टर डाक ए .डी .द्वारा

11754/1179

क फाइल संख्या (File No.) : V2(27)26/Ahd-II/Appeals-II/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-296 -17-18**

दिनांक (Date):29/01/2018 जारी करने की तारीख (Date of issue): 20/2/2018

**श्री उमा शंकर,** आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker ,** Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No . **63-65/ADC/2016/RMG Dated: 31/03/2017** issued by: Additional Commissioner Central Excise (Div-V), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s Adani Gas Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है |

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

**भारत सरकार का पुनरीक्षण आवेदन :**
**Revision application to Government of India:**

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

Cont..2

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके सथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

M/s Adani Energy Ltd., CNG Station, Near Helmet Circle, Near AMTS Depot, Memnagar, Ahmedabad-380 052 is engaged in the manufacture of excisable product 'Compressed Natural Gas' (CNG) falling under Chapter sub-heading No. 27112900 of the first schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'CETA, 1985'). During the course of audit conducted by the officers of the department for the period January-2009 to October-2013 it was observed that the appellant did not include the trade margin offered to Oil Marketing Companies (OMCs) in the assessable value of CNG supplied by the appellant resulting in evasion of duty. On the basis of statement dated 09/12/2013 of Shri Nikul D. Shrimali, Deputy Manager (F&A) and authorized signatory for the appellant and verification of the agreements and records, it appeared that the trade margin was a compensation paid by the appellant to OMCs in lieu of various facilities received from the OMCs such as Lease / Rent of the CNG station / outlet, personal expenses, other utilities provided at the CNG station / outlet, Insurance and other ancillary expenses for the CNG station and any other expenses related to the CNG station / outlet. In terms of the explanation under Section 4 of the Central Excise Act, 1944 (CEA, 1944), the price-cum-duty of excisable goods sold by the appellant shall be the price actually paid to it for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the appellant in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods. As it appeared that the deduction availed by the appellant was includible in the assessable value, a Show Cause Notice F.No.V.27/15-02/OA/2014 dated 31/01/2014 covering the period of January-2009 to October-2013 was issued to the appellant that was adjudicated *vide* OIO-AHM-EXCUS-002-COMMR-06-14-15 dated 27/08/2014.

2. As the appellant continued with the availing the said deduction in the assessable value, there more Show Cause Notices ('the SCNs') were issued, which have been adjudicated *vide* **Order-in-original No.63-65/ADC/2016/RMG dated 31/03/2017** (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). In the impugned order the demand has been confirmed as demanded in all the three SCNs under the provisions of Section 11A(1) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Section 11AA of CEA, 1944 imposing penalty on the appellant under Section 11 AC(1) (a) of CEA, 1944 as follows:

| Sl. No. | SCN No. and Date | Period covered | Demand Amount confirmed | Penalty imposed |
|---|---|---|---|---|
| 1. | V.27/15-111/OA/2014 dated 19/11/2014 | 01/11/2013 to 30/06/2014 | ₹87,68,509/- | ₹8,76,851/- |
| 2. | V.27/15-48/OA/2015 dated 21/07/2015 | 01/07/2014 to 31/03/2015 | ₹1,02,21,537/- | ₹10,22,154/- |
| 3. | V.27/15-18/OA/2016 dated 19/04/2016 | 01/04/2015 to 31/12/2015 | ₹1,10,09,120/- | ₹11,00,912/- |
| | | TOTAL: | ₹2,99,99,166/- | ₹29,99,917/- |

रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्रापट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व ज़मा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

**इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।**

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

3. Aggrieved by the impugned order, the appellant has preferred the instant appeal mainly on the following grounds:

1) The impugned order is *ex facie* illegal, erroneous and unsustainable as it is premised on a misconceived basis that the appellant was reimbursing the OMCs in respect of the expenses that the latter had incurred on its behalf. This premise is contrary to facts and the impugned order is liable to be quashed as per the ratio in the judgment of Hon'ble Supreme Court in the case of CCE vs. Alnoori Tobacco Products – 2004 (170) ELT 135 (SC) and Escorts Ltd. vs. CCE – 2004 (173) ELT 113 (SC). The findings in the impugned order are contradictory to the conclusion arrived at in as much as it is stated in the impugned order that the property in the CNG remained with the appellant till it was transferred to the end customer, implying that there was no sale of CNG by the appellant to the OMCs whereas on the other hand the impugned order also holds that the supposed trade margin offered to the OMCs was towards an amount that the appellant was liable to pay to the OMCs for services availed by it, which was includible in the transaction value. The appellant submits that if it was the Revenue's case that OMCs were rendering services to it that were being reimbursed by way of trade margin, the most logical and natural corollary was that proceedings ought to have been initiated for recovery of Service Tax. Since there is no such proceeding, it was clearly impermissible and without jurisdiction to contend that the OMCs were rendering services to the appellant. The appellant submits that the agreement with OMCs being one of sale and purchase, there was no stipulation to make sure that the OMCs earn a particular minimum fixed amount which would make good the supposed rent and other expenses. The impugned order had erred in holding that the appellant was remunerating the OMCs the expenses incurred on maintenance, administration and distribution of CNG towards insurance and other utilities and expenses, by way of trade margins. The transaction between the appellant and the OMCs was on a principal to principal basis, where it was selling CNG to the OMCs, who as dealers were further reselling the same to the retail outlet, which in turn was selling to the end customer. As the appellant had in the agreement with the OMCs stipulated that it cannot sell beyond the maximum price indicated by the appellant, the agreement stipulated that the difference between the price at which the OMCs purchased and the price at which it was to resell, would be called its trade margin and that in determining this margin, the factors which shall be considered include cost and expenses of the OMC on rent, taxes and their increases, other expenses, commission to its dealers etc. This cannot by any stretch of imagination be inferred to mean that the alleged trade margin was qua any service being rendered by the OMC to the appellant. The findings in the impugned order were contrary to the provisions of Section 4. In case where a manufacturer maintains its own depot and sells goods from such a depot, the assessable value on which it is liable to discharge Central Excise duty is the value at which the goods or like goods sold from the depot on the date of the clearance , in terms of Rule 7 of the Central Excise Valuation Rules. On the other hand, the very same goods that the manufacturer sells ex factory to a dealer are to be assessed at a transaction value which, in all likelihood, would be lower than the depot selling price. This difference in the price cannot by itself be presumed to be a case of under valuation inasmuch as the two transactions are different and independent of each other and attract different provisions of law for determining the transaction value. Section 4(1)(a) uses the terminology 'in connection with' which means that connection must be direct and clear as between cause and effect and not remote and doubtful. The term 'connected with' must be considered to imply a substantial or direct connection and not a fanciful or highly problematical connection. Unless there is 'connection between amount paid and sale of goods (like cause and effect relationship), the amount will not be includible in 'transaction value'. There is no evidence to show that there is any kind of direct or indirect consideration paid by the OMCs to the appellant. The burden to prove that the consideration in the disputed transactions is not the sole consideration is upon the Revenue as held in CCE vs Japan Mannequin Co. – 1999 (108) ELT

138 (Tribunal) and Mohan Bottling Co. (P) Ltd. vs CCE – 2013 (295) ELT 260 (T)., which the Revenue had failed to do. The trade margin in question remained same during the tenure of the agreement in spite of change in price of CNG. The transactions were on 'Principal to Principal' basis. The ownership of CNG is transferred from the appellant to the OMCs at the INLETS of the CNG stations and therefore, the appellant had taken the insurance cover in respect of risk and liability for CNG delivered and stored at the retail outlets as the owner of the gas was the appellant till the time the CNG enters the INLETS. If the appellant had declared less sales value, sales tax authorities would have challenged sales transactions and demanded Sales Tax. The amount of trade margin is not flowing from the buyer to the seller.

2) The appellant submits that it had specifically pointed out that the computation of demand in the notice was incorrect, in as much as, even assuming without admitting that the trade margin represented additional consideration, the said amount would be deemed to be including the element of excise duty as there was no other amount alleged to have been received by the appellant. As regards interest and penalty, the appellant states that once the duty itself was not payable, the question of levying interest or imposition of any penalty does not arise.

3. Personal hearing in the case was held on 10/01/2018. Shri Rahul Patel, C.A. attended on behalf of the appellant. The learned C.A. reiterated the grounds of appeal and explained that it was transaction value between principal to principal. He also referred to invoices and contract which had not been disputed or challenged by the department. He submitted a citation Mahanagar Gas Ltd. vs CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai).

4. I have gone through the contents of the impugned order as well as the grounds adduced by the appellant in the present appeal. The adjudicating authority has relied upon the decision of CESTAT, Mumbai in the case of Tata motors Ltd. vs CCE, Pune – 2015 (328) E.L.T. 321 (Tri. – Mumbai) as seen in paragraph 21 of the impugned order where paragraph 6.6. of the case law has been reproduced as follows:

**"6.6** An argument has also been advanced by the appellant that in the present case, as there is no flow back from the dealer to the appellant, the discount given by the appellant to the dealer cannot be added to the assessable value. This argument is not acceptable for the following reason. We have to see for what purpose the discount was given, that is, whether it is a genuine trade discount or a compensation for the services rendered. By definition, transaction value includes the amounts charged for or to make provision for advertising or publicity, servicing, warranty, commission, or any other matter, by reason of, or in connection with the sale and what is excluded is only the taxes actually paid or payable on such goods. **In other words, the transaction value does not exclude from its scope the compensation paid for the services rendered. In the present case, the dealers were required to render services on behalf of the appellant by way of warranty services, insurance services, financial services and so on to the customers. For rendering such services, the appellant was required to compensate the dealers which was done not by making direct payments but by reducing the prices of goods sold later by way of special discounts.** There is no evidence led before us that these discounts were passed on to the customers (except for an affidavit filed by Sri Krishnan). But evidence to the contrary exists. In view of the above position, it is difficult to accept the plea made in this regard."

The adjudicating authority has relied on the above ratio to buttress the finding that in the case of direct sale from its own CNG stations, the expenses related to administration, maintenance, rent, insurance etc formed part of the assessable value but in the case of sale of CNG from co-located CNG outlets situated at the premises of Oil Marketing Companies (OMCs), all these expenses were excluded from the assessable value with the sole intention to undervalue goods. In this regard, I agree with the appellant's plea that the onus is on the department to prove that the expenses towards services received were reimbursed in the guise of trade margin. This issue has to be verified and evidence is required to be adduced to substantiate the allegation because mere comparison of prices is not sufficient to prove that the appellant had indulged in mis-declaration of the price of the service component in the transaction giving it the guise of trade margin.

5. On the other hand, during the personal hearing in the instant appeal, the learned C.A. appearing for the appellant has relied upon a case law in the matter of Mahanagar Gas Ltd. vs. CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai), with regards to a similar dispute as to whether trade margin offered to OMCs for supply of CNG is liable to be included in the assessable value or not. In this decision, Hon'ble Tribunal has held that as VAT / Sales Tax is paid by M/s Mahanagar Gas Ltd. on sale of CNG to OMCs and the OMCs were paying VAT / Sales Tax on sale to their customers, there is no service component in such transactions. The relevant portion of this case law is reproduced below for ready reference:

> "5. We have considered the rival submissions and perused the records.
>
> 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.
>
> 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."**

It appears from the impugned order that the decision in the case of Mahanagar Gas Ltd. vs. CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai) was not brought before the adjudicating authority by the appellant for consideration during the process of adjudication. Therefore, the facts of the present case remain to be examined in the light of Mahanagar Gas Ltd. vs. CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai). Further, in paragraph 23 of the impugned order, it has been held that the relation between the appellant and the OMCs was not on principal to principal basis. However, it can be seen that in the case of Mahanagar Gas Ltd. vs. CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai) *supra*, the Tribunal in paragraph 5.3 of the case law has given a contrary view with regards to principal to principal basis of transaction in the following terms:

**"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."

In order to decide as to whether the above ratio holding that the transaction is on principal to principal basis is applicable or not to the present case, the facts of the present case are required to be examined in line with the Tribunal order *supra* at the level of jurisdictional office. Therefore, the case is remanded back to the original authority for consideration of the facts of the present case in view of the Tribunal

decision in the matter of Mahanagar Gas Ltd. vs. CCE, Mumbai-V – 2017 (348) ELT 175 (Tri.-Mumbai) and any other relevant case law pertaining to the valuation of CNG as impugned in the instant appeal, in accordance with the principles of natural justice.

6. **अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।**
The appeal filed by the appellant stands disposed of in the above terms.

(उमा शंकर)
आयुक्त (अपील्स-१)

Date: 29 /01 / 2018

Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Adani Gas Ltd.,
CNG Station, Near Helmet Circle,
Near AMTS Depot, Memnagar
Ahmedabad

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad-III.
3. The Additional Commissioner, C.G.S.T.(System), Ahmedabad-III.
4. The Deputy Commissioner, C.G.S.T. Division: IV, Ahmedabad.
5. Guard File.
6. P.A.