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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ARAVIND KUMAR; J., N.V. ANJARIA; J.
CIVIL APPEAL NOS. 2471-2473 OF 2015; JULY 20, 2026

COMMISSIONER OF SERVICE TAX MUMBAI
versus
M/S BHARAT PETROLEUM CORPORATION LTD. ETC.

Finance Act, 1994 – Section 65(19) and Section 65(105)(zzb) – Business Auxiliary Service – Service Tax – Service Tax Liability on Oil Marketing Companies (OMCs) for Dispensing Compressed Natural Gas (CNG) – Sale vs. Agency – Principal-Agent Relationship – Distinction between Outright Sale and Contract of Agency - The Supreme Court allowed the appeals filed by the Revenue, setting aside the order of the CESTAT and restoring the Orders-in-Original that confirmed the service tax demand against the respondent-Corporations (BPCL and HPCL) under the category of "Business Auxiliary Service" - Key Legal Principles Settled by the Court – i. Substance Over Form in Jural Relationships- The true relationship between parties must be gathered from the conjoint reading of all terms and conditions of the agreement in substance, rather than the form, nomenclature, or isolated expressions like "Principal-to-Principal" or "sale" used by the parties; ii. Litmus Test of Title and Retention of Stock - In an outright sale, the buyer acquires absolute dominion and proprietary rights over the goods, and the seller is divested of control - Where the supplier retains ownership of the goods until final dispensation and commands that all unsold/unused stocks be returned or disposed of per its directions upon the contract's termination, the transaction is conclusively one of agency and not sale. iii. Price Control and Pre-Arranged Remuneration as Attributes of Agency - When the retail price is exclusively fixed/revised by the supplier, the infrastructure/equipment belongs to the supplier, and the distributor is remunerated by a pre-arranged commission or profit margin calculated on the actual quantity sold (rather than buying the goods to resell them at their own discretionary profit), the relationship is that of a "Principal and Agent"; iv. Taxability under Business Auxiliary Service - Since the respondent OMCs act as facilitators, marketing promoters, and commission agents for the sale of CNG belonging to their client (MGL), their activities squarely fall within the definition of "Business Auxiliary Service" under Section 65(19) read with Explanation (a) of the Finance Act, 1994, making them liable to pay service tax. *[Relied on M/s Snow White Industrial Corporation vs. Collector of Central Excise; Bhopal Sugar Industries Ltd. vs. Sales Tax Officer (1989) 3 SCC 351; Hafiz Din Mohammad Haji Abdulla vs. The State of Maharashtra, 1962 SCC OnLine SC 208; Bharti Cellular Limited v. CIT, (2024) 8 SCC 608; Union of India vs. Future Gaming Solutions (P) Ltd., (2025) 5 SCC 601; Bhopal Sugar Industries Ltd. vs. Sales Tax Officer, (1977) 3 SCC 147; Para 5-12]*

For Appellant(s): Mr. Raghavendra P Shankar, A.S.G. Mr. Gurmeet Singh Makker, AOR Mr. Karan Lahiri, Adv. Mr. Bhuvan Kapoor, Adv. Mr. Ishan Sharma, Adv. Ms. Pallavi Mishra, Adv.

For Respondent(s): M/S. S. Narain & Co., AOR Mr. M.h. Patil, Adv. Mr. Sandeep Narain, Adv. Ms. Manasi Patil, Adv. Mr. Viraj Reshamwalla, Adv.

J U D G M E N T

N.V. ANJARIA, J.

For the purpose of convenient reference, the contents of this judgment are divided into heads and sub-heads, mentioned with corresponding paragraphs, as under.

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Challenge in Appeals

1. The present Appeals under Section 35L (b) of the Central Excise Act, 1944[1] read with Section 83 of the Finance Act, 1994 (as amended)[2], are preferred by the Commissioner of Service Tax, Mumbai against common order dated 04.06.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai[3] in Appeal Nos.ST/778 and 779/12 & ST/85346/13-Mum, which were preferred by M/s Bharat Petroleum Corporation Limited[4] and M/s Hindustan Petroleum Corporation Limited[5], respondent Nos.1 and 2 herein[6] respectively.

1.1 CESTAT allowed the Appeals and set aside the Orders-in-Original Nos. 03-04 and 05-06/ST/SB/2012-13 dated 16.08.2012, whereby the Commissioner of Customs (TAR), Mumbai, confirmed the demand towards service tax against the respondent-Corporations.

Issue Involved

2. The issue centripetal to the controversy in the present appeals is whether the activities of the respondentCorporations in relation to sale of Compressed Natural Gas[7] to the consumers provided by Mahanagar Gas Limited[8] at and through the petrol pump outlets owned by the respondent-Corporations would fall within the purview of "Business Auxiliary Service" as defined under Section 65(19) read with Section 65(105)(zzb) of the Finance Act and consequently whether it would attract the liability of payment of service tax.

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[1] **Hereinafter, "Central Excise Act"**
[2] **Hereinafter, "Finance Act"**
[3] **Hereinafter, "CESTAT"**
[4] **Hereinafter, "BPCL"**
[5] **Hereinafter, "HPCL"**
[6] **Hereinafter, "the respondent-Corporations"**
[7] **Hereinafter, "CNG"**
[8] **Hereinafter, "MGL"**

Attendant Facts

3. MGL was engaged in manufacturing and distributing CNG, which is excisable good. MGL had been receiving natural gas from Gas Authority of India Limited[9], whereafter the natural gas was transported through gas grids to the various retail outlets including those belonging to the respondent-Corporations situated across the city of Mumbai, Thane etc. The gas compressors, dispensers, air compressors with air tank cascades, and various meters were installed by MGL, which were used for compression of natural gas into CNG.

3.1 It was stated that MGL was paying central excise duty on the manufactured goods, namely CNG, at such online stations, retail outlets including the outlets of the respondent-Corporations. MGL used to supply natural gas through pipelines to different retail outlets of the respondent-Corporations. The manufacturing of CNG took place when the natural gas was compressed to the requisite pressure by using the compressors installed at the outlets of the respondent-Corporations.

3.1.1 It was a contractual arrangement between the parties for which MGL entered into an Agreement with BPCL on 30.03.1998. The Agreement was renewed on 10.06.2004 and further revised as per amendment Agreement dated 21.11.2008. Similar Agreement dated 01.06.1999 was executed by MGL with HPCL. The Agreements contained various clauses and conditions in respect of providing various services to the respondent-Corporations in connection with sale of CNG by MGL at the outlets of the respondent-Corporations.

Claim of Department

3.2 It is the case of the appellant-Department that the respondent-Corporations were engaged in providing taxable services such as "Business Auxiliary Service", acting as manpower recruitment agency, providing banking and financial services, transport of goods by road, sponsorship services, services relating to renting of immovable property, and supply of tangible goods for use, and for such purposes, they had obtained the service tax registration under the provisions of the Finance Act. The appellant stated that the services provided by the respondent-Corporations in relation to the marketing of CNG received from MGL would become "Business Auxiliary Service" within the scope and ambit of Section 65(19) read with Section 65(105)(zzb) of the Finance Act.

Demand Raised

3.3 From the intelligence input from the Director General of Central Excise Intelligence, Mumbai Zone, it was *inter alia* revealed that the respondent-Corporations had been providing the site and manpower for sale of CNG as vehicular fuel and further that as per the Agreements entered into by the respondent-Corporations with MGL, the respondent-Corporations had been receiving a commission/profit margin at the prescribed rate from MGL and that, they were liable to pay the service tax.

3.3.1 On the ground that the respondent-Corporations had been rendering the "Business Auxiliary Service", the Additional Director General, DGCEI, MZU, Mumbai issued a show-cause notice dated 18.10.2010 to BPCL. The said notice, pertaining to the period from April 2005 to March 2010, stated that MGL was engaged in manufacturing and distribution of CNG which were excisable goods, that MGL had installed compressors, etc. and thus had been discharging the liability of payment of central excise duty on the said manufactured goods at the outlets, including those of respondent-Corporations. It was further stated that based on the actual quantity of CNG sold, the respondentCorporations received commission/profit margin. An amount of Rs.7,20,78,037/- was demanded to be

[9] **Hereinafter, "GAIL"**

recovered from BPCL. By another notice dated 19.10.2011, the Department called upon BPCL to pay Rs.1,40,03,174/- with interest and penalty in respect of the period from April 2010 to March 2011.

3.3.2 Similar demand notice came to be issued to HPCL on 18.10.2010 by the competent authority. On the same set of facts and premises, service tax of Rs.6,86,65,245/- for the period from 01.04.2005 to 31.03.2010 was demanded from HPCL. HPCL was served with another show-cause notice dated 04.10.2011 in which service tax for the period from 01.04.2010 to 31.03.2011 to the tune of Rs.1,21,11,933/- with interest and penalty was demanded.

Findings In Orders-in-Original

3.4 The aforementioned show-cause notices issued to the respondent-Corporations were adjudicated by the Commissioner (TAR), Mumbai resulting into passing of Orders-in-Original dated 16.08.2012. It was observed that the respondent-Corporations had been providing site, manpower etc. for sale of CNG as vehicular fuel to be sold to the consumers and receiving commission/profit margin at prescribed rate. It was noticed that the respondentCorporations had entered into an Agreement as amended by subsequent Agreements with MGL.

3.4.1 It was further noted by the competent authority that in the process, the respondent-Corporations contravened various provisions of the Finance Act such as, failed to make an application for registration with the Superintendent of Central Excise for payment of service tax under Section 66 of the Finance Act, which was leviable in respect of the transactions of CNG availed from MGL for selling it to the consumers from its outlets, did not determine the correct value of the “Business Auxiliary Service” provided by them to MGL, failed to pay the service tax, failed to furnish the accounts in relation to the service tax payable and had also omitted to provide the particulars of the “Business Auxiliary Service” and the correct value thereof.

3.4.2 The questions addressed by the competent authority were whether the arrangement of sale of CNG between the respondent-Corporations and MGL was for sale of goods, and whether it would thence fall outside the ambit of provisions of Chapter V of the Finance Act. Secondly, whether the nature of activities would be covered under the definition of “Business Auxiliary Service”. The thrust of the defence raised by the noticees – the respondentCorporations was that they had been purchasing CNG from MGL and the transaction between them and MGL was in the nature of sale of goods and would stand out of service tax net.

Explanation By BPCL/HPCL

3.5 The respondent-Corporations proceeded to submit explanation stating *inter-alia* that they were Central Government Public Sector Undertakings engaged in the business of refining and distributing the petroleum products all over India through the network of Installations and Depots under the Ministry of Petroleum and Natural Gas having refinery known as Bombay Refinery at Mahul. It was stated that MGL was engaged in the manufacture of CNG which processes natural gas after purchasing from GAIL and later the same was distributed through two channels, one as Piped Natural Gas[10] to domestic and commercial consumers as cooking fuel and the other as CNG as fuel for vehicles after its conversion as CNG. According to the respondent-Corporations, their outlets were of

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[10] **Hereinafter, “PNG”**

three types namely Mother Stations, Online Stations and Daughter Booster Stations at which the processing and compression are carried out.

3.5.1 It was contended by the respondent-Corporations that the transactions with MGL were in the nature of sale because (a) the manufacture of CNG takes place at retail outlets of BPCL, (b) the sole ownership of equipments installed at such outlets is of MGL, (c) similar arrangements are made with other private parties who are paid by MGL for providing similar services, (d) BPCL pays sales tax/VAT to the State Government which amount is deducted by BPCL from the sale proceeds of CNG remitted to MGL.

Conclusion By Adjudicating Authority

3.6 The competent adjudicating authority noted that MGL compresses natural gas at 200 bar pressure to sell the resultant product of CNG directly to the ultimate consumers by delivery to vehicles through the outlets owned and operated by the respondent-Corporations and such other private parties who are appointed as agents providing services to MGL. The said outlets by the private parties act as agents to sell CNG to the consumers on behalf of MGL under the invoices/bills raised by, on behalf of and in the name of MGL and that there was a "Principal-Agent" relationship.

3.6.1 It was further stated that the price charged in the bills/invoices was the Maximum Retail Price[11] determined by MGL from time to time. These services, it was observed, are rendered against payment of service charges and the entire sale proceeds are remitted by the private party agents – the respondent-Corporations to MGL.

3.6.2 It was further noticed by the competent authority that the obligation of the service providers under the contract was to merely provide all facilities including shed, canopy and other infrastructure for supply and sale of CNG to motor vehicles, abiding by the terms and conditions of the contract entered into with MGL. The competent authority noted that similar arrangement was made by MGL with other private parties by entering into contracts with them.

3.6.3 The competent authority concluded that the services provided by the respondent-Corporations to MGL which were "Business Auxiliary Service", were covered within the ambit of Section 65(19) to become taxable service under Section 65(105)(zzb) of the Finance Act. The following services used to take place in course of the transactions between the respondent-Corporations and MGL. (i) The respondent-Corporations earmark the site for dispensing CNG. (ii) Equipments are installed by MGL for the purposes of dispensation of CNG. (iii) MGL recovers damages from the respondent-Corporations. (iv) BPCL is obliged to give access to MGL for inspection of site carried out by the officials of MGL. (v) Manpower, shed, canopy is provided by BPCL.

3.6.4 The competent authority held that the transaction of supply of CNG by MGL to BPCL was not on "Principal-toPrincipal" basis but was on "Principal-to-Agent" basis and that the respondent-Corporations, as the case may be, had been acting as an agent on behalf of MGL providing services, finally selling the goods-CNG to the consumers on behalf of MGL. While arriving at the above conclusion, the competent authority also considered the statement of one Shri Sibal Chakraborthy, Senior Manager (R&RJM) of MGL, who *inter-alia* stated that the control and ownership of natural gas as well as CNG manufactured at the respective outlets/online stations whether or not owned by MGL, till final dispensation of CNG to the vehicular users as fuel, remained with MGL and that online stations have no claim for the stocks of either natural gas or CNG.

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[11] **Hereinafter, "MRP"**

3.6.5 The terms and conditions of the Agreements entered into between BPCL and MGL were considered by the competent authority and highlighting Clause 8.4 of the Agreement, it viewed that the respondent-Corporations were receiving the commission in respect of the services provided. Finally, the competent authority confirmed the demand of service tax against the respondent-Corporations together with interest and penalties under the provisions of the Finance Act.

View of CESTAT

3.7 The aggrieved respondent-Corporations challenged the respective Orders-in-Original before CESTAT. Appeal Nos.ST/778/12-Mum and ST/85346/13-Mum were preferred by respondent No.1-BPCL, whereas appeal No.ST/779/12-Mum was preferred by respondent No.2HPCL. By common judgment and order dated 04.06.2014, CESTAT allowed the appeals.

3.7.1 After considering the case of both sides, CESTAT concluded that the respondent-Corporations were engaged in buying the goods from MGL and the question of rendering the services to MGL by them for marketing of goods did not arise. It was sought to be highlighted that the MGL was discharging VAT/sales tax liability while selling CNG to the respondent-Corporations. It was reasoned that merely because goods were sold at Retail Sales Price[12] fixed by MGL, it would not imply that the profit margin shall be treated as commission for rendering the service.

3.7.2 CESTAT, by its observations and findings in its Paragraph 11 in the impugned judgment, accepted the case and contentions of the appellants on the basis of its own appreciation of the provisions of the Agreements. The following was referred,

"As per the said provisions, the service provider provides service to his client for marketing or promotion of the goods to third party. In these cases, appellants themselves are buying goods from M/s. MGL. Therefore, the question of rendering the service to the client for marketing of the goods does not arise. We further find that MGL is discharging VAT/ST liability while selling the CNG to appellants. Although the RSP is fixed but it does not mean that the profit margin shall be constituted as commission for rendering the service."

3.7.3 It was reasoned further,

"…it is found that all the transactions shown by the appellants are done on principal to principal basis. Moreover, the appellants are selling these CNG on payment of VAT/ST to the buyers. There is no commission component that have been received by the appellants from M/s. MGL. For e.g., if the appellant is receiving goods from MGL at Rs. 100/- per kg. including VAT but these, goods are sold by the appellant to customers on RSP fixed at Rs. 102/- per kg., that does not mean that the appellant are receiving commission of Rs. 2/- from MGL."

3.7.4 According to CESTAT, the transaction between the parties was on "Principal-to-Principal" basis and that there was no commission component. CESTAT thus accepted the case of the private parties Corporations that they were not rendering the services, therefore, not to become liable to pay the service tax under the category of "Business Auxiliary Service".

Submissions of Appellant

4. Heard learned Additional Solicitor General Mr. Raghavendra P Shankar with learned advocate-on-record Mr. Gurmeet Singh Makker for the appellant and learned

[12] **Hereinafter, "RSP"**

counsel Mr. M.H. Patil with advocate-on-record M/s. S. Narain & Co. with other assisting learned advocates for the respondents at length.

4.1 Assailing the judgment of CESTAT, the following submissions were advanced on behalf of the appellant:

(i) The respective Agreements between MGL and the respondent-Corporations were *pari materia* stipulating various services to be provided by the respondent-Corporations to MGL with regard to the sale of CNG by MGL at the outlets owned by the respondent-Corporations and that towards consideration of such services, the payment of commission/profit margin was contemplated in Clause 8.4 of the Agreement. The specific services were provided as enumerated in Clause 4 of the Agreement.

(ii) The commission/profit margin was to be paid to the respondent-Corporations per Kg of CNG sold. The rate initially fixed was modified in the renewal Agreement. Even in the subsequent instruments of Agreement, the condition regarding payment of commission/profit margin was retained.

(iii) The services provided by the respondent-Corporations to MGL in connection with the sale of CNG were in the nature of "Business Auxiliary Service" as defined in Section 65(19)(i) read with Section 65(105)(zzb) of the Finance Act. The respondent-Corporations were engaged in promotion or marketing of goods on behalf of the appellant, acting as a commission agent.

(iv) Various provisions, terms and conditions agreed upon and reflected in the Agreements between MGL and the respondent-Corporations were highlighted to submit that in form as well as in substance there was no "sale" inasmuch as there was no transfer of "property in the goods-CNG".

(v) The clauses of the Agreement revealed that neither the title nor the risk passed at any point of time from MGL to respondent-Corporations. The parties implemented the Agreement in the manner consistent with such understanding, which was confirmed by the statement of Mr. Saibal Chakraborthy, Senior Manager (R&RM) of MGL.

(vi) The respondent-Corporations had been acting as "agents" for the sale of CNG by MGL to customers. The decision of this Court in **Hafiz Din Mohammad Haji Abdulla vs. The State of Maharashtra**[13], was relied on to submit that in that case similar clauses were interpreted by a three-Judge bench of this Court whereby the pricing control was retained by the supplier of the goods.

(vii) The Order-in-Original dated 16.08.2012 considered in detail the relevant provisions of the Agreements and the finding was correctly arrived at it was that a service rendered by respondentCorporations to MGL. This position stood reinforced by the fact that similar Agreements were entered into by MGL with other private entities for using fuel pumps, which was treated as services for the purpose of service tax liability under Section 65(19) read with Section 65(105)(zzb) of the Finance Act.

4.1.1 It was further submitted that,

(a) The impugned order of CESTAT accepted the factum that the respondent-Corporations were themselves buying CNG from MGL on a "Principal-to-Principal" basis. However, CESTAT misdirected itself to subsequent record the finding that "the question of rendering the service to the client for marketing of the goods does not arise".

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[13] **1962 SCC OnLine SC 208**

(b) CESTAT misdirected itself to conclude that since the invoices were raised by the respondentCorporations on the customers and the VAT was charged in these invoices, there was no service element.

(c) A manifest error was committed by CESTAT in the impugned order in holding that the appellants were not receiving any commission from MGL, therefore, it could not be presumed that they were rendering any service to MGL. The admitted factual position is to the contrary.

(d) CESTAT relied on the decision of **Mahanagar Gas vs. Commissioner of Central Excise**[14], which was a misplaced reliance because: (a) CESTAT relied on the judgment of the co-ordinate bench presently under Appeal in these proceedings and cannot therefore cited as a basis for dismissing the present Appeal; (b) The *in limine* dismissal by this Court of the Civil Appeal does not transform the judgment of CESTAT into a binding decision rendered by this Court; (c) the matter in issue was altogether different and concerned whether the "commission/profit margin" paid by MGL to respondent-Corporations could be included transaction value under Section 4(1)(a) of the Central Excise Act for the purposes of computation of excise duty.

(e) The ratio of **Mahanagar Gas** (supra) is that the commission/profit margin was not includable in the excisable value of the "manufacture" of CNG by MGL at the pumps of respondent-Corporations. This is of no relevance to the question involved in these Appeals, that is whether service tax is payable on such commission/profit margin.

Submissions of BPCL/HPCL

4.2 On the other hand, the impugned order by CESTAT was strenuously supported by the respondent-Corporations. In addition to canvassing for what is held by CESTAT, following further submissions were made:

(i) MGL had been selling CNG to respondent-Corporations and they subsequently sold CNG to actual users which arrangement stood substantiated from the following documents:

(a) Summary statement of CNG sold by MGL to respondent-Corporations on daily basis during 01.01.2011 to 31.01.2011.

(b) Central Excise invoices issued by respondent-Corporations for sale of CNG on daily basis on payment of duty, during 01.01.2011 to 31.01.2011.

(c) Tax invoices of MGL on respondent-Corporations for sale of CNG, issued in the month of January 2011 and paying VAT.

(d) Joint tickets for sale of CNG by respondent-Corporations to one of the BPCL's outlets in the month of January 2011.

(e) BPCL's invoices for sale of CNG to its customers and paying VAT.

(f) There is a declaration in each invoice to the effect of holding registration under VAT and sale of CNG under the said Act.

(g) For delay in payment, interest is payable by respondent-Corporations to MGL, as per Clause 8.3 of the Agreement.

(h) Declaration in Form N-13A is required to be given.

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[14] **2017 (348) ELT 175**

(ii) The commission received by the respondentCorporations was nothing but a discount. The amount of discount used to change from time to time. The nomenclature of commission was a misnomer. The relevant clauses in the Agreements have to be construed in that way only. The transactions between MGL and respondent-Corporations were of purchase and sale to become "sale" under Section 4 of Sales of Goods Act, 1930.

(iii) The property in goods-CNG was transferred from MGL to respondent-Corporations before further sale to the customers takes place.

(iv) Various clauses in the Agreement such as Clauses 2.1, 2.3, 2.4, 2.5, 3.2, 4.1, 4.2, 4.6, 4.7, 5.1, 5.2, 7.1, 7.1(d), 8.1, 8.2, 8.3, 8.6 etc. were relied on to contend that the parties had been acting on "Principal-to-Principal" basis, and there was neither an agency nor services rendered.

(v) The expression "commission" did not determine the real nature of the payment. All clauses of the Agreement have to be read together for their conjoint effect. The decisions in **Bhopal Sugar Industries Ltd. vs. Sales Tax Officer**[15], **Commissioner of Central Excise, New Delhi vs. DCM Textiles**[16], **Moped India Ltd. vs. Asstt. Collector of Central Excise, Nellore and Others**[17], **Union of India and Others vs. Future Gaming Solutions (P) Ltd. and Another**[18] were relied on.

(vi) When the transaction is in the nature of purchase and sale, the service tax is not payable, as held in **Future Gaming** (supra). In order to constitute a service on behalf of client to cover in the "Business Auxiliary Service", there should be three parties. For this proposition, the decision in **Kafila Hospitality and Travels Pvt. Ltd. vs. Commissioner of Service Tax - Delhi**[19] was pressed into service.

(vii) Sale from MGL to the respondent-Corporations and further sale by these Corporations to ultimate consumers do not take place simultaneously, since the compressed gas was first stored in the stationary cascades wherein the meter reading would take place and CNG would be subjected to necessary pressure.

(viii) Since the activity of compressing natural gas amounted to manufacture w.e.f. 01.03.2001, the exclusion clause under Section 65(19) would apply.

(ix) Even if it is assumed that the respondent-Corporations were not having absolute control, still it would amount to purchase-sale transaction, as held by seven-Judge Constitution Bench of this Court in the case of **Vishnu Agencies (Pvt.) Ltd. vs. Commissioner Tax Officer and Others**[20].

(x) Contractual obligations of MGL and respondentCorporations' obligations under Article IV were for their mutual benefit. The same pertain to equipment and not pertain to sale of CNG.

Crux of Controversy

5. The core issue that surfaces for consideration is whether the transaction between the respondentCorporations and MGL in supply of CNG was in the capacity of "Seller and Buyer", in other words whether MGL was a seller of CNG which goods used to be

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15 **(1977) 3 SCC 147**
16 **(2006) 9 SCC 349**
17 **(1986) 1 SCC 125**
18 **(2025) 5 SCC 601**
19 **(2021) 47 GSTL 140 (T.LB)**
20 **(1978) 1 SCC 520**

purchased by the respondent-Corporations to sell through their outlets to the ultimate consumers. Or whether the respondent-Corporations were only service providers to facilitate MGL to sell goods as CNG through their outlets to the consumers/the vehicle owners.

5.1 The respondent-Corporations would contend that the arrangement was on "Principal-to-Principal" basis and the transaction was in the nature of "sale" as understood in law by MGL in their favour. According to the appellant, on the other hand, the arrangement between them was in the nature of "Principal-Agent" relationship and the supply of CNG to the respondent-Corporations was at "Principal-toAgent" basis and in no way could be treated as "sale".

5.1.1 Since the arrangement between the parties was documented in black and white governed under the Agreement dated 30.03.1998 with respondent No.1-BPCL and Agreement dated 01.06.1999 with respondent No.2HPCL renewed and amended subsequently, contain identical terms, they would provide acid test to judge as to whether the arrangement and the transactions thereunder done between the parties were in the nature of outright sale or there was a "Principal-Agent" relationship. It would be useful to look into the conditions and stipulations of the said Agreements, for, they in their nature and effect go to suggest about the jural relationship between the parties.

5.1.2 Before judging the kind of legal arrangement emanating from the Agreement between MGL and respondent-Corporations and considering the nature of the terms and conditions of the said agreements, it would be useful to discuss the legal corners of sale and what are the aspects that reveal jural relationship of "Principal and Agent", what the law perceives to make an agency.

Business Auxiliary Service

5.2 Since the purport and operational dimension of definition of "Business Auxiliary Service" would inform the discussion hereinafter and guide the conclusion as well as the outcome of these Appeals, it would be apposite to engage with the said definition at the outset.

5.2.1 Section 65 of the Finance Act deals with definitions. Sub-section (19) of Section 65 contains the definition of "Business Auxiliary Service", which is as under,

(19) "business auxiliary service" means any service in relation to—

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this subclause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of change, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client;

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this subclause, "inputs" means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of, the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "**Commission Agent**" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) "**Excisable goods**" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);

(c) "**Manufacture**" has the meaning assigned to it in clause (f) of section 2 of the Central (…)'

5.2.2 Similarly, Section 65(105) of the Finance Act defines "taxable service", which is as under,

(105) '**taxable service'** means any service provided or to be provided-

…

(zzb) Any service provided or to be provided to a client, by any person in relation to business auxiliary service;…'

What is 'Sale'

5.3 In order to constitute a transaction to be "sale", it must satisfy certain essential characteristics. The Sale of Goods Act, 1930[21] explains in Section 4 the "sale and the agreement to sell". As per sub-section (1) of Section 4 of the Sale of Goods Act, "a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". Sub-section (3) thereof mentions that "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale". It adds to mention that where the transfer of property in the goods occurs at a future point of time, the contract will be in the nature of agreement to sell.

5.3.1 The "contract of sale" as defined in Section 4 of the Sale of Goods Act is similarly in its import to Section 2 of the English Sale of Goods Act, 1979. The emphasis is that, in a contract of sale of goods, the seller transfers or agrees to transfer "the general property in goods to the buyer for a price".

[21] **Hereinafter, "Sale of Goods Act"**

5.3.2 The essence of the transaction of sale is that it has the effect of transferring property in goods from one person to another that is from the buyer to seller. The necessary ingredients of the transaction are explained in the following words in Benjamin's Sale of Goods (4th Edn. 1992),

"The seller must agree to transfer the property and the buyer to take it, and they must agree to do so in return for money which is paid and received as the price of the goods. Where the consent of the parties does not extend so far, or does not exist at all, there is no sale. Such transactions or events are sometimes termed as quasi-contracts of sale or implied contracts of sale; but there is no true analogy with a contract of sale properly so-called and the Sale of Goods Act is not applicable to them."

5.3.3 The term "property" implies "ownership of goods". In other words, the ownership must be transferred to a buyer from the seller in the transaction which becomes a sale transaction. Whether the property or ownership in the goods is transferred or not, is in its ultimate analysis, dependent upon the intention of parties, which intent is to be gathered from the terms and conditions of the Agreement and their comprehensive effect.

5.3.4 When the transfer of property or ownership occurs, it becomes a sale. It is obvious that such transaction of sale makes the buyer the owner of the goods and he can exercise in respect of the goods which has come in his possession by way of sale, all the proprietary rights. It signifies buyer's total control over the disposition of the goods bought to his own fullest discretion. The seller, in a transaction of sale, is divested of such control once the sale transaction gets complete.

5.3.5 The other attributary effect of a transaction of sale is that risk of loss of goods travels and is on the buyer. One more essential aspect attached to sale is that the transaction involves payment of price by the buyer to the seller which comes as corresponding obligation for transfer of ownership of goods in favour of buyer. If the remuneration in transaction cannot be termed as a price, it will remain doubtful in law to treat the transaction to be sale. In the circumstances where the element of price is not found, the transaction may be anything other than sale.

5.3.6 This Court in **Sri Tirumala Venkateswara Timber and Bamboo vs. Commercial Tax Officer, Rajahmundry**[22], referred to its own earlier judgment in **State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd.**[23] and explained what is "sale",

"…It is a nomen juris, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In other words, it is necessary for constituting a sale that there should be an agreement between the parties for the purpose of transferring title in the goods, that the agreement must be supported by money consideration and that as a result of the transaction the title to the property must actually pass in the goods."

(Unnumbered Paras)

Concept of Agency

5.4 Since the test to be applied is to find out as to whether the relationship between the parties is one of "seller and buyer" or that of "Principal and Agent", who does the service for the Principal, it will be useful to consider the concept of agency as understood in law. Section 182 of the Contract Act, 1872[24] defines "agent" and "principal". The Section is as under,

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[22] **(1968) 21 STC 312**
[23] **(1958) 9 STC 353**
[24] **Hereinafter, "Contract Act"**

"**182.** ***"Agent" and "principal" defined***.—An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal"."

5.4.1 Section 183 of the Contract Act states who may employ an agent, whereas Section 184 mentions who may be an agent. No consideration is necessary to create an agency, as per Section 185. In view of Section 186, an agent's authority may be expressed or implied. Section 187 defines express authority and implied authority. An authority is said to be express when it is given by words spoken or written. The implied authority is one when it is to be inferred from the circumstances of the case and the things spoken or written. The extent of an agent's authority is defined under Section 188 of the Contract Act. An agent has authority to do every lawful thing which is necessary in order to do such act. An agent is to be indemnified, provides Section 222 of the Act, against the consequences of lawful acts.

5.4.2 In **Future Gaming Solutions (P) Ltd. (supra)**, this Court referred with approval to "Bowstead and Reynolds on Agency", 23rd Edition to explain the idea of agency as understood in law (para 62 of the decision),

"…agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties and the other of whom similarly manifests assent so as to act or so acts pursuant to the manifestation. Thus, the one on whose behalf the act or acts have to be done is called the principal and the other who is to act is called the agent. Any person other than the principal and the agent may be referred to as the third party."

5.4.3 It was further explained,

"The authority of the agent to act on behalf of the principal constitutes a power to affect the principal's legal relations with third parties. Such authority could be called actual authority or apparent authority. Thus, the essence of agency is that a person acts on the principal's behalf. Therefore, the term agency is used to connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties. Usually, the legal relations so created will be contractual in nature."

5.4.4 And the following was added,

"Conversely, the mere fact that a person does something in order to benefit another and the latter is relying on the former to do so or may have requested or even contracted for performance of the action, does not make the former the agent of the latter. The centrality to agency is the conferral of authority to alter legal relations; as such in common law, being an agent is not a status but a description of a person, while and only so long as the person is exercising such authority. Thus, where one person (the principal), requests or authorises the other (agent), to act on his behalf and the other agrees to do so, the law recognises that such agent has power to affect the principal's legal position by acts which, though performed by the agent, are to be treated in certain respects as if they were acts of the principal. It is common to regard control by the principal as a defining characteristic of agency. Thus, agency is termed as acting on behalf of the principal and subject to principal's control."

5.4.5 This Court in **Bharti Cellular Limited v. CIT**[25], explained the concept of agency. In that case, the assessees were cellular mobile service providers. The issue involved was regarding the liability to deduct tax at source under Section 194H of the Income Tax Act, 1961 on the amount payable. As per the Revenue, the amount which was payable was

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[25] **(2024) 8 SCC 608**

the commission to an agent by the assessees under the Franchise/distributor agreements existed between the assessees and the franchise holders.

5.4.6 The law of agency was discussed in the context of the expression "acting on behalf of another person". After referring to the group of provisions of Section 182 and others of the Contract Act, the Court stated that the agency is a triangular relationship between the principal, the agent, and the third party. It was further observed that in order to comprehend what is required to be examined is an inter-se relationship between the principal and the third party on one hand and the agent and the third party on the other.

5.4.7 It was highlighted that for creating a legal relationship of "Principal and Agent", certain decisive considerations weigh,

"a. The essential characteristic of an agent is the legal power vested with the agent to alter his principal's legal relationship with a third party and the principal's co-relative liability to have his relations altered. [F.E. Dowrick, "The Relationship of Principal and Agent", (1954) 17 Modern Law Review 24, 37.]

b. As the agent acts on behalf of the principal, one of the prime elements of the relationship is the exercise of a degree of control by the principal over the conduct of the activities of the agent. This degree of control is less than the control exercised by the master on the servant, and is different from the rights and obligations in case of principal to principal and independent contractor relationship.

c. The task entrusted by the principal to the agent should result in a fiduciary relationship. The fiduciary relationship is the manifestation of consent by one person to another to act on his or her behalf and subject to his or her control, and the reciprocal consent by the other to do so. [*Restatement (Third) of Agency* (American Law Institute Publishers, 2007).]

d. As the business done by the agent is on the principal's account, the agent is liable to render accounts thereof to the principal. An agent is entitled to remuneration from the principal for the work he performs for the principal."

'Sale' and 'Agency' Distinguished

5.5 Sri Tirumala Venkateswara Timber and Bamboo (supra) highlighted the distinction between the contract of sale and contract of agency. It was observed that the agent is authorized to sell or buy on behalf of the principal and account for either the sale proceeds or the goods. It was observed that the essence of the contract of sale is the transfer of title to the goods for the price paid or promised to be paid.

5.5.1 It was succinctly stated,

"…As a matter of law there is a distinction between a contract of sale and a contract of agency by which the agent is authorised to sell or buy on behalf of the principal and make over either the sale proceeds or the goods to the principal. The essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. The transferee in such a case is liable to the transferor as a debtor for the price to be paid and not as agent for the proceeds of the sale. The essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds. The true relationship of the parties in each case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the legal relationship."

(Unnumbered Paras)

5.5.2 It was further stated thus,

"It is manifest that the question as to whether the transactions in the present case are sales or contracts of agency is a mixed question of fact and law and must be investigated with reference to the material which the appellant might be able to place before the appropriate authority. The question is not one which can properly be determined in an application for a writ under Article 226 of the Constitution."

(Unnumbered Para)

Clauses In Agreements

(a) Representation by BPCL/HPCL

6. Having discussed the jurisprudential and judicially propounded concepts of "sale" and "agency" and considered the attributes of relationship between "Buyer and Seller" on one hand and "Principal and Agent" on the other, noticing in that light with some details the clauses in the Agreements between MGL and respondent-Corporations, so as to comprehend what type of relationship they manifest. The various clauses are referred to from the Agreements by MGL with BPCL, as the Agreement with HPCL contains identical terms.

6.1 It was stated that MGL was a registered company established for marketing, distribution, and supply of natural gas in the city of Mumbai, and that part of its business activity is to supply CNG to light motor vehicles through its own outlets as well as the outlets of certain public sector oil marketing companies, including those belonging to the respondent-Corporations. It was stated in the preface of the Agreement that the respondentCorporations had represented before MGL that they had the requisite site to set up retail outlet for the supply and sale of CNG at locations in the city and that MGL agreed to permit them to open retail outlets for the sale of CNG to motor vehicles.

(b) Definitions

6.1.1 In the definition section in paragraph 1.1, subclause (b), "equipment" is defined to include gas compressors, storage tank/cascade, meter and check meter, dispenser, and other fixtures including pipeline and all equipment and accessories required for filling of CNG in vehicles. The "Outlet" in sub-clause (d) included the outlet to be opened by the corporation. "Retail price" was defined in sub-clause (f) to be charged by the corporation as communicated by MGL from time to time. "Safety measures" were contemplated in definition in sub-clause (g) to mean the procedures, directions, guidelines and measures as communicated by MGL to the corporation from time to time for the purpose of safe storage and sale of CNG.

(c) About Supply of CNG

6.2 In Paragraph II, under the title "Supply and Sale of CNG", Clause 2.1 provided as under,

"MGL appoints the Corporation to open one or more Outlets for sale of CNG to Vehicles, on· the terms and conditions hereinafter contained and the Corporation accepts such appointment."

6.2.1 Clause 2.2 reads as under,

"The Corporation shall perform the functions and provide the services in relation to sale of CNG as hereinafter mentioned."

6.2.2 In Clause 2.3, it was *inter alia* stated that the parties may, from time to time, agree upon additional locations or sites for the purpose of the sale of CNG from such additional outlets. Clause 2.4 stated as under, "The Retail Price of CNG shall be fixed by MGL and the Corporation shall sell the CNG only at the Retail Price, communicated by I MGL to the Corporation, from, time to time. MGL may, at any time, revise the Retail Price and such revised Retail Price shall be binding on the Corporation from the date of communication thereof to the Corporation. The current Retail Price of CNG as on the date of this ·Agreement will be the price specified in Annexure II, which Retail Price shall remain in force until revised by MGL."

6.2.3 As per Clause 2.5, it was stated that the corporation shall furnish to MGL monthly forecast of its requirements for CNG at the outlets in advance.

(d) Obligations of MGL

6.3 The obligations of MGL under the Agreement were mentioned in Paragraph III, incorporated in Clauses 3.1 to 3.3, extracted hereinunder,

"3.1. MGL shall install on the Site, at its own cost, the Equipment. The details of the Equipment to be installed at the current· outlets are given in Annexing I. MGL shall be responsible for maintaining the Equipment in proper-· working condition. All repairs to and replacement of any defective Equipment shall be undertaken by MGL at its own cost, save in the case of any damage to the Equipment on account of negligence by the Corporation or · any of its employees or agents in which case the cost of repairs and replacement shall be recoverable by MGL from the Corporation.

3.2. MGL shall supply CNG from the tap-off point on its line to the intake line for Online station or into the storage tanks/cascades for daughter station on the Site to enable sale of CNG to Vehicles by the Corporation. MGL shall endeavour that adequate quantity of CNG is supplied to the Corporation to enable the Corporation to meet the demand therefore, provided that this obligation of MGL is subject to the Corporation having provided MGL with the monthly forecast, as hereinbefore mentioned.

3.3. MGL shall obtain statutory approvals as required from concerned authorities with respect to the design and manufacturing aspect of the Equipment to be supplied by them."

6.3.1 On the other hand, Paragraph IV of the Agreement sets out the obligations of the Corporation. Clauses 4.1 to 4.2 were as under,

"4.1. The Corporation shall ear mark that an adequate area, as described in Annexure-I is available at all times on the Site for installation of the Equipment and for easy entry and exit of Vehicles as and when the need arise.

4.2. The Corporation shall construct an appropriate foundation, shed(s), trenches and boundary of a chain fence or an RCC wall around the Site. The corporation shall ensure that the Site is at all times kept free from any encroachment."

6.3.2 Clause 4.3 mentioned that the Corporation shall make provision for continuous and adequate supply of water, electricity and other utilities as may be required for filling CNG at their own cost. As per Clause 4.4, the Corporation would take care of the equipment and shall ensure that the same are operated by properly trained staff, whereas Clause 4.5 enjoined them to follow the safety procedures as specified by MGL. The Corporation was obliged to obtain all statutory approvals from the competent authorities for opening the outlets, installation of equipments, power supply, etc., the taxes such as property tax and municipal tax would be payable by the Corporation.

6.3.3 Paragraph V is equally important. Clause 5.1 therein stipulated that the equipment shall be the absolute property of MGL and that BPCL should not claim any right of ownership in the equipment, whereas the site will be the property of the Corporation as per Clause 5.2.

(e) MGL's Right to Inspect etc.

6.4 Paragraph VI of the Agreement was regarding the confirmations by the Corporation, in which, as per Clause 6.1, it was provided that the Corporation shall not be entitled to any compensation for the site and utilities provided. That the Corporation shall, at all times, permit the regional officers or other authorized representatives of MGL to enter upon the site for the purpose of taking meter readings to calculate CNG sales.

6.4.1 As per Clause 6.3, the Corporation shall permit the officers and representatives of MGL to inspect the equipment and verify the safety procedures, and the Corporation shall not have any right to adjust, repair, or clean any of the equipment. The equipment is provided to be the property of MGL as per Clause 6.4, in which the Corporation shall not claim any right.

6.4.2 Clause 6.5 contemplated that in case, any of the outlets are to be operated by a third party, as dealer of the Corporation, the responsibility and liability of the Corporation shall continue for the acts of such third party. Representations and warranties are mentioned in paragraph VII. Clause 7.1 was with regard to representations by the Corporation, whereas general representations were mentioned in Clause 7.2.

(f) Mode of Billing, Payments

6.5 Clause 8.1 in Paragraph VIII titled as "Billing and Payments" provided that the retail prices shall be paid by the respondent-Corporations to the MGL after accounting for sales tax and the amounts of commission/profit margin for the actual quantity of CNG sold. The retail prices applicable on the date of Agreement were specified in the annexures to the Agreement. It was further stipulated that the taxes, duties and cesses payable shall be collected by the respondent-Corporations and to be paid by them under the applicable laws.

6.5.1 Clause 8.2 mentioned that MGL shall, in the beginning of the month, send to the respondent-Corporations the invoices of the quantity of CNG sold during the preceding month, which invoices shall be based on the meter readings on CNG dispensers jointly taken by MGL and respondent-Corporations. As per Clause 8.3, the respondent-Corporations shall pay MGL the invoice values for CNG as per the invoices.

6.5.2 Clause 8.4 noticeably reads as under,

"8.4. In consideration of the services provided by the Corporation, MGL shall agree to pay to the Corporation commission/profit margin as may be agreed between the parties from time to time as per the Government Directive, as may be applicable, in the matter. Provided that such commission/profit margin shall be payable on the actual Corporation. quantity sold by the Commission/Profit margin agreed at present is specified at Annexure III. It is further agreed between the parties that MGL shall raise the Invoice after adjusting such commission/profit margin and reducing the Retail Price by sales tax amount, as applicable from time to time, 1n the manner specified in Annexure III."

6.5.3 Clause 8.5 stated about the mechanism to be adopted in the event of discrepancy in the invoice value or the amount of commission payable to the respondentCorporations. As per Clause 8.6, in case of delay by respondent-Corporations in payment of the invoice value, delayed payment interest at the rate of 24% to be levied on the unpaid amount.

(g) BPCL/HPCL not liable for deficiency

6.5.4 As per Clause 9.1 in Paragraph IX, it is contemplated that MGL shall be liable for the quantity of CNG supplied and that BPCL shall not be liable for any deficiency in quantity of CNG or any claims made by any owner of any vehicle in respect of such deficiency. The respondentCorporations are held liable for safety and security of the equipment installed at the site as per Clause 9.2. Under Clause 9.3, respondent-Corporations agreed to indemnify MGL against any loss, damage, claim, action, proceeding, costs etc., that may be suffered by MGL on account of any damage or injury to the person or property of the third party.

(h) MGL to be Indemnified

6.5.5 Similarly, under Clause 9.4, the respondentCorporations agreed to indemnify MGL against any loss, damage, claim etc., suffered or incurred by MGL on account of any acts done or caused to be done by them, its employees, or agents. It is provided in Paragraph 9.5 that the indemnity provision as above shall survive till the expiry or termination of the Agreement. Paragraph X deals with the aspect of '*Force Majeure*', providing that neither of the parties shall be liable in the eventualities of *force majeure* for any delay or in respect of failure to discharge their respective obligations, including the shutdown of gas supply. Paragraph XI contains Clauses No.11.1 to 11.3, dealing with the confidentiality about the information of business transactions etc. Paragraph XII, in its Clauses 12.1 and 12.2, provides that the 5 years duration of the Agreement unless terminated in the events mentioned under the termination clause.

(i) Right of MGL to Terminate

6.6 Paragraph XIII of the Agreement contains Clause Nos.13.1 to 13.2, which entitles MGL to terminate the Agreement at any time by written notice. Sub-clauses (a) to (j) enlist such circumstances which would entitle MGL to terminate the Agreement. Similarly, Clause 13.1.3 mentions the eventualities in clauses (a) to (g) under which the respondent-Corporations may terminate the Agreement. Paragraph 13.2 is about the effect of termination. The termination would entail an obligation on the part of respondent-Corporations to pay the retail prices to MGL payable till the date of termination and as per Clause 13.2.2, the respondent-Corporations shall also pay MGL the costs, charges, and expenses incurred by MGL on account of the premature termination.

6.6.1 Clause 13.2.3 postulates that the termination of the Agreement would result into three consequences (a) MGL shall forthwith stop further supply of CNG (b) all unsold CNG in the possession of the respondent-Corporations shall be returned to MGL or shall be disposed of in accordance with the directions of MGL (c) MGL shall become entitled to remove the equipment from the site and to take back the possession thereof, for which purposes the authorized officers and the representatives of MGL shall enter the site without any obstructions. Clause 13.2.4 says that once the termination is effected, the respondent-Corporations shall not sell CNG to any vehicles.

(j) Sale to be Exclusive

6.7 Clause 15.1 in Paragraph XV, dealing with exclusivity, stated that the respondent-Corporations shall not sell gas of any other supplier or manufacturer at the outlet and that the outlet shall be exclusive for the purpose of CNG supplied by MGL. Paragraph XVI onwards deals with the aspects of prevalence of the Agreement, benefits of the Agreements, assignments and notices, costs and expenses, partial invalidity, future acts, etc. Paragraph XXIV was the arbitration clause.

6.8 The Agreement dated 01.06.1999 was executed between MGL and HPCL containing identical clauses of terms and stipulations. While the terms and conditions of the original Agreement dated 30.03.1998 remained the same, in the renewal dated 10.06.2004, Clauses 8.1 to 8.6 came to be modified. In the same way, in the renewal and amendment Agreement dated 21.11.2008, Clause 6.1 was inserted in place of Clause 8.4, which deals with commission/profit margin.

(k) Amended Clauses Compared

6.9 Instead of reproducing the amendment Agreement, the following comparative part would make it clear as to the modification and the replacement in the conditions done by virtue of the renewal/amendment Agreements as above in comparison with the original Agreement dated 30.03.1998,

Comparison of Agreements executed between M/s Mahanagar Gas ("MGL") and BPCL

Agreement dated 30.03.1998	Renewal Agreement dated 10.06.2004	Renewal and Amendment Agreement dated 21.11.2008
CLAUSE 8.4 **"**In consideration of the services provided by the Corporation, MGL shall agree to pay to the Corporation commission/profit margin as may be	Clause 8.1-8.6 have been modified by Clause II (Billing and Payment) as under, "II. Billing and Payments 2.1 Clauses 8.1 to 8.6 with regard to billing	**After inquiries began (see Pg. 251, showing that inquiry began as far back as 23.08.2007**), Clause 6.1 (Commission / Profit margin)
agreed between the parties from time to time as per the Government Directive, as may be applicable, in the matter. Provided that such commission/profit margin shall be payable on the actual quantity sold by the Corporation. Commission/Profit margin agreed at present is specified at Annexure III. It is further agreed between the parties that MGL shall raise the Invoice after adjusting such commission/profit margin and reducing the Retail Price by sales tax amount, as applicable from time to time, in the manner specified in Annexure III."	and payment contained in the said Agreement shall stand modified to the following extent. 2.2 MGL shall raise Invoice for the quantity of CNG sold by the Corporation on or before 5th day of each month. Such Invoice shall be based on the meter readings on the CNG dispensers jointly taken by MGL and the Corporation. Provided further that Corporation shall ensure that its authorized representative is deputed at the (illegible) certify the meter reading at the time and the date as may be notified by MGL from time to time. In case, where, authorized representative is not deputed as aforesaid the meter reading taken by MGL shall be final and binding on the parties. 2.3 The Corporation shall pay to MGL the Invoice value for CNG sold as stated in the Invoice ("Invoice Value") along with requisite Form	replaces Clause 8.4 of the Agreement dated 30.03.1998 as under, "It is hereby agreed between the Parties that for CNG sold [effective from January 01st 2006, 0600 hours, the Commission / Profit Margin payable by MGL to the Corporation as per Annexure III shall stand revised to Rs. 1.40/Kg (Rupees One and Paisa forty Only). It is agreed that the Commission/ Profit Margin is towards sale of CNG by MGL to the Corporation on principal to principal basis to enable the Corporation to maintain the uniform MRP at all the outlets in the given municipal area."

	(presently Form N - 13A) as required by the Bombay Sales Tax Act/ other applicable laws/rules within 7 (Seven) - days from the date of receipt of the Invoice; 2.4 In case of delay by the Corporation in the payment of any Invoice Value, for the period commencing form April 1, 2003 the Corporation shall pay Delayed Payment Charges "DPC") @16% (Sixteen percent) P.A. on the amount unpaid from the due / date of payment until the payment / realization. Such delayed payment Charges shall be compounded monthly. "	

6.9.1 Even after and pursuant to amendment and additions in the Agreements, the original terms and conditions remained the same for their operation and effect.

Decisive Aspects

7. It is trite that any written document, for its nature and effect, has to be construed through the terms and conditions incorporated therein. The stipulations have to be read in totality and collectively for comprehending the true purport and intent thereof. It is not the form but the substance of the conditions becoming operative in their totality, has to be considered. From various clauses in the Agreement entered into between MGL and the respondent Corporations for supply and sale of CNG, certain decisive features emerge, which go to establish that the supply of CNG by MGL to the respondent-Corporations was not in the nature of sale and in the transaction, there was no legal attribute for creating the supply.

(a) Providence of Services

7.1 The Agreements were meant to provide services by the respondent-Corporations to MGL for selling CNG on behalf of MGL to the ultimate consumers. The respondentCorporations were obliged to extend and provide services as expressly enumerated in Clause 4 of the Agreements as well as those emanating from other clauses. At the cost of repetition, the services to be provided by the respondent Corporations included making available the outlets and online stations, constructing sheds and laying the foundation at the site, providing electricity, water and other such requirements, and also to provide trained staff for the purpose of operation of the equipments at the outlets. It was incumbent upon the respondent-Corporations to obtain the statutory approval.

(b) As a Facilitator

7.1.1 The whole status of the respondent-Corporations becomes that of a facilitator, who by providing different kind of agreed upon services, arrange and smoothen the sale by MGL to the vehicle owners. The respondent-Corporations acted in the process, in capacity of an agency without any real and effectual dominion over the goods. Their task was to promote the sale on behalf of MGL and make the marketing of goods convenient. A facilitator cannot be a buyer. It only acts on behalf of supplier-principal to become an agent.

(c) Element of Control

7.1.2 It could be gathered from the various conditions in the Agreements that the control over the supply of CNG till the subsequent sale by the respondent Corporations to the vehicle owners, remained with MGL. The respondentCorporations facilitated to provide the site and the retail outlets for the sale of CNG supplied by MGL to the customers on behalf of MGL. All the equipments installed such as gas compressors, storage tanks, check meters, dispensers, and all such others including pipeline and accessories for filling CNG in vehicles belong to MGL. They were supplied by MGL. The safety measures mentioned in sub-clause (g) in Clause 1.1 were to be ensured.

(d) Fixation of Price

7.1.3 The fixation of price and monitoring thereof was in the hands of MGL. The respondent Corporations were enjoined under the Agreements to sell CNG at the price fixed by MGL. Clause 2.4 mentioned that the retail price of CNG shall be fixed by MGL and that the respondent Corporations shall sell the goods only at such price communicated by MGL from time to time. The power to revise the retail price was also with MGL to remain binding on the respondent Corporations. The prices were mentioned in the Agreement itself.

(e) MGL Is Regulator

7.1.4 The respondent Corporations were under obligation to furnish to MGL the monthly forecast of their requirements of the quantity of CNG at the outlets. This monthly assessment was to be given to MGL in advance. As per Clauses 3.1 to 3.3 of the Agreement, it was MGL which shall install at the site, at its own cost, the equipments. In the event of any damage to the equipment on account of negligence by the respondent-Corporations or by their employees or agents, MGL could recover the costs of repairs. Again, the repairs were to be undertaken by MGL itself. Right to inspection is with MGL, whose officers can enter the outlets as of right.

(f) Monitoring of Supply of Goods

7.1.5 The supply of CNG by MGL from the tap-off point on its line to the intake line was to be facilitated by MGL to enable selling of CNG to the vehicle owners by the respondent-Corporations, which would act in the process on behalf of MGL. Furthermore, MGL was to ensure the supply of adequate quantity of CNG to the respondent-Corporations which, in turn, were under corresponding obligation of supplying the monthly forecast.

(g) The Risk Factor

7.1.6 The risk relating to supply and sale and other things relevant thereto were to be the responsibility of MGL. Handling of risk factors was an obligation of MGL. The risk did not pass at any point of time from MGL to respondentCorporations from the starting point of supply of CNG till CNG is dealt with and sold to the vehicle owners by the respondent-Corporations. When the risk was not transferred, it would suggest that the title would also not be transferred.

(h) Retention of Control Over Goods

7.1.7 One of the important indicators of the fact that there is no passing of title in goods in favour of the respondent Corporations is the retention of right over the stocks. While the responsibility to supply the goods-CNG in adequate quantity rests on MGL, CNG never becomes the property of the respondents in view of the terms of the Agreement. A clear indication thereof is available from the clauses relating to termination of the Agreement. One of the resultant postulates, upon termination of the Agreement, the effect of which is mentioned in Clause 13.2, is that all unused stock of CNG in possession of the respondent Corporations shall be returned to MGL or the same shall be disposed of as per the directions given by MGL. MGL is entitled to remove or take back the stock from the possession of the respondentCorporations. Not only that, for any such purpose, the authorised officers of MGL are entitled to enter the site without obstruction from the respondent Corporations.

(i) Commission Agent

7.1.8 The Agreements in terms stipulated about the payment of commission by incorporating express clause in form of Clause 8.4. The brooding ingredient of payment of commission is elaborated separately in the succeeding paragraph.

(j) Title did not Pass

7.1.9 All the terms and conditions of the Agreement taken together in their operation invariably suggest that the title or ownership in the goods did not pass at any point of time to the respondent Corporations. MGL continued to hold the title over the goods for all procedural and practical purposes. This is elaborated in succeeding paragraph 10.

Under Domain of MGL

7.2 In **M/s Snow White Industrial Corporation, Madras versus Collector of Central Excise, Madras[26],** the appellant was engaged in manufacturing supercem **waterproof cement paint in its factory at Madras which had entered into an agreement which was described as** “agreement of sale” with Company named Gillanders Arbuthnot and Co. Ltd. which was described as “selling agent”. While considering as to whether the agreement was an agreement for agency for the purpose of payability of the duty on the basis of the price at which the goods were sold by the Company, this Court looked at the terms and conditions in the agreement standing in the background.

7.2.1 The Court stated,

“It is true that though the appellants described 'G' as selling agent, but that is not conclusive. It is also true that the difference of the prices between the transfer and the selling prices is suggestive of an outright sale. But in the instant case the most important fact suggesting agency was the clause which enjoined that the stocks left over unsold beyond two years from their receipt could be returned to the appellants who were bound to replace these. This should be considered with the fact that the appellants were to prefer all claims for recovery of damages from the carriers and any reduction in price during the currency of the agreement was to be duly reflected in the price of stock lying unsold with 'G' and the obligation that on the termination of the contract by either the appellant or 'G', unsold stocks lying with the latter were to be returned to the former. Therefore, the Tribunal was right in considering this agreement as the agreement for sole selling agency and not as an outright sale.”

(Paras 7 and 10)

7.2.2 Thus, **M/s Snow White Industrial Corporation, Madras** (supra) highlighted the important facet which would suggest the creation of agency which was the clause which

26 **(1989) 3 SCC 351**

enjoined that the stocks left over or remaining unsold would be returned to the appellant. In the present case also, the domain over the stock of CNG continues to remain with MGL.

Evident Intention

7.3 The Agreements between the parties record, as previously stated, that the respondent Corporation concerned approached MGL telling it that they had the facility of outlets/online stations available at different sites in the city of Mumbai and elsewhere through which the respondent-Corporations could facilitate the sale of CNG to the consumers which may be supplied by MGL to them. This offer was agreed upon by MGL resulting into execution of the Agreements containing the terms as above. All the terms in the Agreements came to be accepted by the respondent-Corporations.

7.3.1 The intention of parties was thus evidently reflected that MGL was to supply CNG which would be sold by the respondent-Corporations to the vehicle users by providing various services in the process, to complete the sale occurring from MGL to the vehicle owners.

Clauses Constituting Agency

8. In **Hafiz Din Mohd. Haji Abdulla vs. State of Maharashtra**[27]**,** the agreement in question contained conditions of the similar nature as envisaged in the present case. This Court addressed the question as to whether the agreement between the appellant-Hafiz Din-the assessees- the *bidi* merchants, who was used to dispatch the *bidis* to other merchants at the diverse places in India upon licence issued by the Government of the Central Provinces for the manufacture and sale of *bidis* in and outside the State of Madhya Pradesh, created a relation of principal and agent or vendor and purchaser between the assessees and the merchants to whom the *bidis* were dispatched. It was observed that relationship between the parties has manifestly to be ascertained in the light of the terms incorporated in the letter and the attendant circumstances.

8.1 It was explained thus,

"…The designation which a party chooses to give to the relation, especially in cases of liability to pay tax, is of little consequence. The Court has in each case, having regard to the terms and the attendant circumstances, to ascertain the true relation between the parties without giving undue importance to the special expressions used by them. It is true that in commercial usage, especially in modern contracts, the expression "agents" or "agency" has acquired an extended meaning: often the so-called agent is merely a buyer who has been given favourable terms in a particular area to sell the manufacturer's or supplier's goods…" (Para 9)

8.1.1 The Court thereafter considered various covenants in the agreement which contemplated the transfer and supply of *bidis* by the appellant-assessees to the merchants, to come to conclusion on the basis thereof that the relationship between the parties was that of "principal and agent" and not of "vendor and purchaser".

8.1.2 The clauses in the contract were highlighted to elaborate,

"By clause (3) of the agreement, the merchant receiving the bidis has agreed to sell them at the rates fixed by the assessees: he is only entitled to add to the rate fixed by the assessees the expenses incurred. By clause (6) the merchant is entitled to Rs. 3-3-0 as commission per box. That remuneration is expressly stated to be in lieu of "labour". By clause (7) the assessees are given the right to increase or reduce the rate of bidis; even in respect of goods which are in stock with the merchant the rate may be increased or decreased and on such alteration of the rate there is an obligation to make necessary adjustment in the accounts (see clause 8). By clause (9) if the

[27] **1962 SCC OnLine SC 208**

merchant is found acting in contravention of the conditions, the assessees have the right to cancel the agency and have the right to make arrangements for the sale of bidis (remaining on hand) as they think best. Clause (9) therefore contemplates that if after the bidis have been despatched and before they are sold, "the agency" of the merchant is cancelled the assessees would have the right to arrange for sale of the bidis remaining in stock. These clauses clearly indicate that the bidis even in the hands of the merchants to whom they were despatched remained the property of the assessees. By clauses (3) and (9) these bidis in the hands of the merchants are expressly referred to as "your bidis"…" (Para 9)

8.1.3 It was further enumerated,

"Clause (4) emphasizes that the property in the bidis despatched to the merchants remained with the assessees. By that clause the merchant undertakes to remit "money towards goods" after sales are effected. Therefore under the agreement between the parties the goods are to be sold at a price fixed by the supplier, the prices are liable to be altered at the instance of the supplier, the person to whom the goods are supplied is to receive a fixed remuneration for his exertion, and is liable to remit the price only after the sale is effected. These are clear indications that the relation is of principals and agent and not of vendors and purchaser. The terms of clause (1) imposing an obligation upon the assessees to meet the demands of bidis of the merchants in the areas assigned to them further emphasizes that character of the relation between the parties…"

(Para 9)

8.1.4 The Court proceeded and stated,

"It is true that by clause (5), for damages or risk to the goods during transit or in the shop of the merchant, the latter is responsible, but that does not alter the true nature of the right in which he holds the goods. It is open to an agent to undertake a liability in respect of goods after they are delivered to him even though the property in goods does not pass to him. Clause (2) providing for giving delivery at the town where the merchant resides has no special significance. The diverse clauses of the agreement, in our judgment, create a relationship of principals and agent and not of vendors and purchaser between the assessees and the merchants to whom the bidis were despatched."

(Para 9)

8.2 As the total effect of the Agreement and the terms thereof is required to be considered to understand the real nature and purport as well as intention of the parties, even if at some place in an isolated context, the word "sale" is mentioned or arrangement for serve limited aspect is described as "Principal-to-Principal", it would not alter the real jural relationship revealing in substance from the Agreement read in totality.

Commission, Not Trade Discount

9. Clause 8.4 of the Agreement expressly contemplated that the respondent Corporations would receive commission/profit margin from MGL. This stipulation about the payment of commission or profit margin, standing in forefront, suggests that the jural relationship between MGL and the respondent Corporations is one of "Principal and Agent", and that the supply of CNG by MGL to the respondent-Corporations was not in the nature of "sale".

9.1 There may be a spacious argument that the nomenclature as "commission" would not be determinative, however, in the instant case, read in conjunction with other stipulations in the Agreements and the nature of the Agreements considered in wholesome manner which are for providing services and for marketing and promotion of sale, the stipulation of commission in Clause 4 in the nature of remuneration paid to the agent rendering services by the Principal. It, in no other way, could be construed. The word "commission" here has the intake of its true sense.

9.1.1 The respondent Corporations harped that what was contemplated in Clause 4 was not a commission but a trade discount. In **Union of India vs. Bombay Tyre International Ltd.[28]**, the concept of trade discounts was explained by this Court as under,

"(i) *Trade discounts*.—Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price." (Para 3)

9.1.2 What is necessary for becoming the payment to be the trade discount is that such discount must be part of the terms of the trade or a condition in the transaction of sale of goods. Trade discount is something, the payment in the nature of which, is by established practice in trade. It is the allowance and the nature of discount known at or prior to the removal of the goods. The concept of trade discount is relevant where the sale is on "Principal-to-Principal" basis, which is indeed not the case here.

Attribute of Agency

9.2 The commission contemplated in Clause 8.4 was a payment for the agency services. MGL was to pay, under the Agreement, to the respondent Corporations the commission or profit margin as agreed upon between the parties from time to time as per the directives of the Government, made applicable. The amount of commission is made dependent upon the actual quantity sold to the consumers on behalf of MGL by the respondent Corporations. The extent of the commission is specified in the annexures to the Agreements. The invoices are to be raised by MGL after adjusting the commission amount and further by reducing the retail price towards the sales tax amount.

9.2.1 Clause 8.5, when considered, *inter alia* provides that in case of any discrepancy in the invoice value or the amount of commission payable to the respondent-Corporations concerned, it will be possible for the respondent Corporation concerned to lodge a claim with the regional office within stipulated time. MGL may accept such claim to the extent it deems fit and shall issue a credit note in favour of the respondent Corporation. Such amount of credit note will be adjusted in the invoice value for the following month.

9.2.2 What is stipulated in Clause 8.5 either about closing of the claim for discrepancy and the discretion on the part of MGL to accept the claim to the extent deemed fit by MGL. This aspect as well as the stipulation about the adjustment of such amount in the invoice of the following month, and the condition in Clause 8.6 cements the factum that the commission mentioned in Clause 8.4 is a commission payable by the principal-MGL to the agents-the respondent Corporations for rendering services.

9.2.3 The payment of commission as an attribute of the principal-agent relationship or for the creation of an agency was recognized by this Court in **Future Gaming Solutions (P.) Ltd.** (supra) in the following observations,

"…The distinction between an agent and the buyer for resale normally turns on whether the person concerned acts personally to make such profit as can be made, or is remunerated by pre-arranged commission. A supplier who fixes the resale price is likely to be a buyer for resale. If a party takes a profit on the resale, it will make him a seller. On the other hand, if a commission is paid on the resale, then, he is likely to be an agent."

(Para 64)

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[28] **(2005) 3 SCC 787**

"Ownership" retained with MGL

10. As discussed hereinbefore, the clinching consideration as to whether the relationship which exists is that of "Buyer and Seller" or the relationship of "Principal and Agent" is created, would be the element of passing of property in goods from one party to another. It would become decisive as to whether the property in goods or title over goods is retained or travels to another party. If the property passes, it will become contract of sale. If the title in the goods does not pass, it would be conclusive factor to suggest that the arrangement is one of agency, even though the goods may have been delivered. Dominion over property and continuance thereof is a litmus test. In a sale transaction, the buyer becomes owner of the property and the seller ceases to have any vestige of title left in the property.

10.1 On the other hand, the agent, after taking delivery of the property of the goods, does not sell it as its own property but sells the same as the property of principal as per the instructions and directions of the principal. The agent does not become owner of the goods. If any loss is suffered by the agent, he will be liable to be indemnified by the principal. All the terms and conditions in the Agreements between MGL and the respondent Corporations confirm that the arrangement flowing from the Agreement is one of "Principal and Agent". They conform to the concept of agency as legally understood. The respondent Corporations sell CNG to the vehicle users acting on behalf of MGL. In **Bhopal Sugar Industries Ltd. vs. Sales Tax Officer**[29], it was observed that the agent upon taking delivery of the goods does not become owner thereof, nor does he sell the goods as its own property.

10.2 The Agreements dated 30.03.1998 and 01.06.1999 between the parties in the present case do suggest that the supply of CNG by the appellant did not involve passing of property to the other side, namely BPCL/HPCL, who act only in capacity of agents to deal with the goods to be supplied to the consumers as middlemen acting on behalf of the appellant and by obeying the terms and conditions prescribed by the appellant. It would be seen that no clause or condition of the contract is indicative of an element of passing of property in favour of the respondent Corporations.

10.3 The respondent Corporations are the commission agents rendering the services to the appellant in distributing CNG acting on the basis of terms and conditions of the Agreement, of course, they are free to perform the task which they are entrusted with by the appellant-principal as per the terms of the Agreements. They do the business as facilitator and promote to sell CNG for the appellant. The respondent Corporations may be enjoying certain "powers" but they do not have the authority to override the principal–appellant and to hold the goods with any titular authority.

Recipient Agent

11. In the facts of the case, there is no gainsaying that no buying and selling takes place between the parties under the Agreement. As could be noticed from the arrangement flowing from the Agreements, the respondent Corporations do not take the goods with the authority to be able to resell to earn the profit out of the sale, as if LPG belongs to them. The respondent Corporations are not the buyers. MGL is not the seller. MGL sells LPG through the agency of respondent Corporations to the vehicle users, at a price charged which is fixed by MGL. The relationship born out is that of "Principal and Agent". The

[29] **(1977) 3 SCC 147**

respondent Corporations do not buy CNG and do not resell the same. The respondent Corporations are the "recipients" of the goods-CNG supplied by MGL.

11.1 In Benjamin's Sale of Goods, 11th Edition, Sweet & Maxwell, the author mentions distinguishing the sale from a contract of agency *inter alia* that when goods are delivered to another for sale to a third party, the recipient may be an outright buyer or he may take the goods on sale or return or may merely be the supplier's agent to sell the goods or an agent of a *del credere* commission, that is, an agent who guarantees to the principal that the buyer will duly pay the price.

11.2 In light of the delineation, the respondent Corporations which act as marketing promoters can claim the status of agents only. As buying and selling does not take place and the terms and conditions of the Agreement go to show that agency services are provided by the respondent Corporations to MGL, any other relationship between the parties except that of "Principal and Agent", stands ruled out.

11.3 In **K. Arumugam vs. Union of India**[30]**,** explained with reverse logic what is "Business Auxiliary Service". In that case, the appellants were carrying out buying and selling of lottery tickets which they used to purchase from the State Government, and in turn, sell them in various other states. The Central Government sought to levy the tax on the premise that the activities of the appellant were "Business Auxiliary Service" chargeable to service tax. The Supreme Court held that the lottery tickets would not fall within the meaning of the expression "goods". Therefore, the lottery selling transaction would not attract the concept of "Business Auxiliary Service". However, in the decision the Court indicated certain essential aspects which when present would make the activity a "Business Auxiliary Service".

Within Purview of Definition

12. It was stated that the activity for promotion of sales or marketing services rendered by the assessees would fall within Clause 65(19) of the Finance Act where the party acts as a promoter of the business and is a marketing agent, the relationship between the parties would be principal and agent. Since in **K. Arumugam** (supra), there was no promotion or marketing of service on behalf of the State, therefore, it would fall outside the purview of service within the meaning of the Finance Act. The present case is a precise case where the respondent Corporations act as marketing agents and promoters of sale for MGL.

12.1 The agent Corporations provide promotional services for marketing and sale of goods belonging to the MGL. Their activity stands squarely covered under Section 65(19) as "Business Auxiliary Service". MGL is the customer of services provided by the respondent Corporations and facilitated by such services, MGL sells the goods-CNG as marketed and promoted by the respondent Corporations to the vehicle owners as per the arrangement in the Agreements.

12.2 The commission is paid to the respondent Corporations for rendering such services. The respondent Corporations are covered within the ambit of "commission agent" as per Explanation (a) of the definition. The services rendered by the respondent Corporations are "taxable services" as defined and understood in Section 65(105) of the Finance Act.

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[30] **(2024) 10 SCC 733.**

Conclusion and Order

13. The respondent Corporations cannot escape the payment of service tax. The view taken by the adjudicating authority in determining the amounts payable towards service tax by the respondent Corporations, and the reasons recorded therefor, were eminently proper. The order of CESTAT reversing the same cannot stand valid.

13.1 Resultantly, the impugned common order of the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai dated 04.06.2014 allowing the Appeal Nos. ST/778 and 779/12 & ST/85346/13-Mum is hereby set aside. The Orders-in-Original Nos. 03-04 and 0506/ST/SB/2012-13 dated 16.08.2012 passed by the Commissioner of Customs (TAR), Mumbai, would stands to operate.

13.2 The appellant is entitled to enforce the demand towards the service tax against the respondent Corporations and for the demand of service tax as adjudicated.

14. All the appeals are allowed.

Any interlocutory application(s), as may be pending, shall not survive in view of disposal of the Appeals as above.