

- Read : 1. Determination application dt.5.5.2009 by M/s. GAIL India Ltd.
2. Determination order No.DDQ-11-2009/Adm-3/21/B-1, dt.20.02.2010.
3. Judgment dt.31.01.2011 in case of the applicant in VAT Appeal No.9 of 2010.
Heard : Shri Dilip Dixit, STP.

PROCEEDINGS

(under section 56(1)(e) of the Maharashtra Value Added Tax Act,2002)

DDQ-11-2011/Adm-3/18/B- 1

Mumbai, dt. 3/9/2013

A brief account of the circumstances under which the present proceedings arise are as follows :

1. The applicant M/s. GAIL (India) Ltd. had filed an application for determination of the rate of tax on sale of LPG other than in cylinders of 14.5kg meant for domestic use.
2. The applicant did not attend the hearing and therefore an *ex-parte* decision was taken pertaining to the application filed by him. Since a common issue was involved, the determination application was decided along with two other applicants' namely M/s.N.M.C. Piped Gas Company Pvt. Ltd. & M/s. JCL International Ltd., by order No.DDQ-11-2009/Adm-3/40/B -1 dt.20.2.2010.
DDQ-11-2006/Adm-5/35/
DDQ-11-2009/Adm-3/21/
3. The coverage under entry 21A of schedule A was discussed and LPG was determined to be not falling under the said entry but under the residuary entry E-1.
4. The applicant approached the Hon. Maharashtra Sales Tax Tribunal (MSTT) against the said *ex-parte* order. The Hon. MSTT (VAT Appeal No.9 of 2010 decided on 31.1.2011) set aside the *ex-parte* order passed in case of the applicant and remanded the matter back for giving an opportunity of fresh hearing.
5. It is in these circumstances that I am called upon to decide the question of the rate of tax applicable to the supply of the product 'LPG' by M/s. GAIL (India) Ltd. to HPCL through Tax Invoice No.MA0040001 dt.07.04.2009.

02. CONTENTION OF THE APPLICANT

The facts as informed by the applicant and arguments are as follows :

- a. The applicant manufactures LPG at LPG Plant at Usar, Dist. Raigad and supplies in bulk only to M/s. Hindustan Petroleum Corporation Ltd. (HPCL) through pipeline for further sale to domestic users in 14.5 Kg. Cylinders as per Government directives as the applicant is not authorized to sell directly. The applicant has only one customer, namely HPCL.
- b. At the time of inception of the MVAT Act, LPG did not find a mention under any of the schedules appended to the MVAT Act nor was the commodity declared by Parliament, at that time to be of special importance in the course of inter-State trade. Accordingly the rate of tax applicable to the sales of LPG was 12.5% under the MVAT Act and the applicant was collecting and paying tax @ 12.5% on their sales to HPCL.
- c. The Parliament amended section 14 of the CST Act by the Finance Act 2006 (Act No.21 of 2006) and inserted a new clause, viz clause (va) in section 14 of the CST Act. The new clause reads as follows: "(va) liquefied petroleum gas for domestic use".
- d. The Maharashtra Government amended the schedules to the MVAT Act in tandem with the amendment to the CST Act. Schedule C was amended w.e.f 18th April 2006 by inserting a new sub entry 'LPG for domestic use sold on or after 18th April 2006' and the

applicable rate of tax was 4%. The applicant therefore started to collect & pay tax @ 4%.

- e. However, the Maharashtra Government further amended the schedules w.e.f. 7th June 2008 by inserting a new entry namely A-21A. It was provided that LPG supplied in cylinders containing upto 14.5 kg for domestic use will be taxed at nil rate. The State government also deleted the entry C-58(b) at the same time.
- f. The net final result is that as per section 14 of the CST Act, 'LPG sold for domestic use' is a 'declared goods'. The MVAT Act contains an entry for LPG supplied in cylinders containing upto 14.5 kg for domestic use and this commodity is free of tax. However LPG for domestic use supplied otherwise than in cylinders containing 14.5 kgs of LPG is not covered by any entry in the MVAT Schedules.
- g. The applicant contends that the impugned transaction is covered by the expression 'Liquefied Petroleum Gas for domestic use' and therefore the applicable rate of tax is 4% even though the MVAT Act does not contain a schedule entry for LPG for domestic use when not sold in cylinders containing upto 14.5 kg.
- h. This amendment does not require LPG to be sold in cylinders etc. In view of the provisions contained in section 15 of the CST Act, the applicable rate of tax to domestic sales of LPG is to be 4%.
- i. The applicant needs to prove two things. In the first place, they have to prove that the LPG they have sold is covered by the expression 'Liquefied Petroleum Gas for domestic use'. Secondly, the applicant needs to prove that even though the MVAT Act does not contain a schedule entry for Liquefied Petroleum Gas for domestic use when not sold in cylinders containing upto 14.5 kg of LPG, and thus the applicable entry is entry 1 of Schedule E, nevertheless the applicable rate of tax remains 4% [now 5%] and not 12.5%.
- j. It is stated that the applicant has only one customer i.e. HPCL. The gas is supplied through a pipe line. HPCL bottles this gas in cylinder containing 14.5 Kg of gas and supply the same to domestic consumers. The applicant emphasized that HPCL has issued two certificates vide dt.28th July, 2006 and 8th March, 2010, thereby certifying that the gas supplied by the applicant is being exclusively used for filling of domestic cylinders only. However, the applicant argued that the observation recorded in the determination order dt.20th February, 2010 that the applicant has not produced any evidence so as to prove that the piped gas is meant for domestic use is incorrect. The above certificates establish that the piped gas supplied by the applicant is for domestic use only.
- k. Till issue of Government Notification No.VAT-1508/CR-72/Taxation-1 dt.06.06.2008 by Maharashtra Govt., LPG being supplied to HPCL for further sale to domestic consumers in 14.5 kg. cylinders attracted VAT at 4% as per Schedule 'C', entry 58, sub-entry (b). As per the above stated notification, LPG supplied in cylinders containing upto 14.5Kg of LPG for domestic use has been included in Schedule A entry 21A and the entry 58(b) in Schedule C i.e., 'LPG for domestic use sold on or after 18th April 2006' has been deleted. Consequent upon issue of this notification, the applicant is unable to understand the rate of tax to be charged to HPCL for the domestic LPG being supplied to them in bulk through pipeline, for further sale to domestic users in 14.5 Kg. cylinders.
- l. The applicant has submitted the following points for kind perusal:
 1. LPG for domestic use has been covered as declared goods under section 14 of the Central Sales Tax Act and the tax payable inside the State shall not exceed four per cent of the sales or purchases effected on or after 18.4.2006.
 2. Further as the spirit of the Govt. behind the issue of the above stated Notification dt.6.6.2008 is to reduce the tax burden on domestic consumers of LPG and as the

LPG supplied by the applicant to HPCL is being sold to domestic consumers, the benefit of the Notification i.e. Nil tax should be allowed on such supplies of LPG which are meant for ultimate utilization by domestic consumers.

03. HEARING

The case was taken up for hearing on dt.06.09.2011 when Shri Dilip Dixit, STP, Shri Patil, Sr. Manager Finance and Shri Sandesh Gharat, Sr. Accountant attended on behalf of the applicant. The applicant informed that he was clarified by letter dt.18.8.2006 by the Department of Act & Rules that LPG sold by them to HPCL is taxable @ 4% provided that HPCL confirms at the end of every year that all of the LPG purchased from GAIL is sold to domestic customers. Under the MVAT Act, LPG for domestic use sold in cylinders is tax free (A-21). LPG for domestic use is a declared commodity (which cannot be taxed at rate more than 5%). It is contended that the LPG sold by them is conveyed in pipes and therefore the applicant does not want to pursue argument that it is covered by A-21. However, it is their contention that LPG sold by them is meant for domestic use and therefore is taxable @ 4% and now 5%. The applicant collects tax @ 5% now. The applicant informed that he was also clarified by letter dt.29.02.2008 by the Department of Legal Matters that sale of LPG would be covered by C-58(b) and is taxable @ 4% as there was no mention of cylinders in the entry. After the deletion of C-58(b), the applicant applied again (on 10.6.2008) and the applicant was advised to apply for determination. Now on remand, they have again argued that the LPG be held as covered by 5%. The applicant submits that they sell LPG only to HPCL. They have produced certificate from HPCL that the LPG is sold for domestic use. In view of the above, the applicant has contended that their prayer be accepted that tax rate applicable could be 5% (declared goods).

The applicant placed reliance on certain judgments of Annapurna Carbon Industries Ltd. v. State of Andhra Pradesh [37 STC 378] and Modi Spinning & Weaving Mill Co. Ltd. v. The Commissioner of Sales Tax, Punjab [16 STC 310]. Since the application was not accompanied by an invoice, the applicant was requested to furnish the same.

By letter dt.07.09.2011, applicant submitted copies of invoices of 1st and 3rd week of April 2009 issued to M/s.HPCL, Usar bottling plant, Alibag, Maharashtra. It was stated that the applicant is supplying LPG through pipe only as indicated in 'Customerwise Gate pass details' while in invoices it is mentioned as No. of tankers which may be read as pipe only. A Note was also given by the applicant wherein it is stated thus :

- With regard to the entries under the Central Sales Tax Act (section 14) and the entries under the MVAT Act, 2002 [A-21A and C-58(b)], it is the stand of the applicant that in all the three instances what is intended by the expression 'for domestic use' is that the last or final use of the commodity should be a domestic use and not the first purchaser.
- We may consider that in case of gas marketing companies such as BPCL or HPCL,

these companies certainly sell LPG in cylinders containing upto 14.5 Kg of LPG. But they never sell these cylinders directly to domestic consumers or final users. These companies sell the 14.5 kg cylinders to their distributors situated in different areas and these distributors sell it to domestic users for final consumption. In other words, the first purchasers of the 14.5Kg cylinders are clearly not employing the LPG cylinders for domestic use. In fact, it is the last purchaser of the LPG cylinders who employs these cylinders for domestic use. If a narrow construction is put on the expression 'for domestic use' and it is held that the first purchaser himself should put the LPG for domestic use, then it may become necessary to disallow the claims of HPCL & BPCL and tax their entire turnovers. It would also mean that the entry A-21A does not exempt a single transaction and that the legislative intention is thus defeated. It is therefore logical, fair and necessary to hold that the expression 'for domestic use' can only mean that the last or final use of the commodity is a domestic use.

- The applicant was informed twice that their product was covered by the entry C-58(b). It was clearly the view that the domestic use contemplated in that entry is the use by the last purchaser of the gas. There was therefore, no manner of doubt that the commodity in the hands of M/s.GAIL was to be treated as LPG for domestic use.
- There are several 'use based' entries in the schedule such as A-1, A-2, A-8, A-12, A-21A and C-58(b) wherein it is contemplated that the 'use' condition is a final use or 'end use' of the product and never insisted that the first purchaser should put the goods to the use contemplated in the entry.
- The applicant contends that,-
 - The end-use of the goods in question is a domestic use; the declared goods' entry contemplates an end-use.
 - The LPG sold by the applicant is therefore a 'declared goods' and thus liable to tax @ 4% during the relevant time. It is not material that there is no specific entry in the MVAT schedules for this commodity.

Certain queries were raised to the applicant which were replied thus :

- Q. Copy of final invoice showing sale of LPG as all the invoices submitted were provisional invoices.
- R. All invoices generated by GAIL are provisional and no final invoices are issued since prices declared by Govt. are provisional and LPG subsidy declared is also provisional. So for any variation in prices, we issue Debit/Credit Note to vendor.
- Q. Tax treatment given to sale of LPG by the applicant under Central Excise Tariff Act.
- R. As per Central Excise Duty under Notification No.4/2005-CE dated 1-3-2005, Chapter 2711 19 00 the Excise duty on LPG for supply to household domestic consumers is NIL. Hence we are not charging excise duty on LPG Domestic. For Non Domestic sale Excise duty is 8%+Edu. Cess 2% + HEC 1% total 8.24%.

- Q. Tax charged by GAIL on the sale of LPG for all the periods from 2005-06 to 2010-11 (yearwise).

R. Details of tax charged are as under :

Period	Tax rate	Amount
2005-06	12.5%	70665162
1.4.2006 to 18.4.2006	12.5%	5971272.71
19.4.2006 to 31.3.2007	4%	14973142.07
2007-08	4%	28847346.99
2008-09	4%	31692572.53
2009-10	4%	24343997
2010-11	4%	26022463
	Total	202515956.30

- Q. Confirmation as to whether all the LPG sold by GAIL to HPCL is for domestic use. Also confirmation as to whether GAIL sells LPG for non domestic use.
- R. For the period 2005 to 2007-08 entire product was sold as Domestic LPG. For the period 2008 to 2009 and 2010 to 2011 in addition to domestic sale, some quantity of Non domestic LPG also sold to HPCL. Details of Non Domestic sale :

Year	Non domestic quantity	VAT rate	VAT amount
2008-09	1786.764 MT	12.5%	8796951.59
2010-11	14594.736 MT	12.5%	65039973

- Q. The applicant has informed that they have sold LPG to HPCL through pipeline. Hence, it is requested to inform whether the LPG sold through the pipe is in liquid or in gaseous form alongwith entire logistics of the supply of gas through pipeline to HPCL in detail.
- R. LPG is supplied to HPCL, Usar through a dedicated pipeline is in liquid form. The detail logistics for the supply/transfer through pipeline to HPCL and as per HPCL Usar requirement it is pumped through metering system to their dedicated pipeline system as detailed :
- The LPG produced at LPG Recovery Plant, Usar is stored in Mounded Storage Tanks (3 nos. tanks of 1430 MT capacity each)
 - LPG is transferred to HP pipeline through transfer Pump system having 3 nos. of pumps in close coordination with consumer.
 - LPG is metered through Product Metering system(2 nos. of Mass Flow Meters) before LPG supply to HPCL through the pipeline maintained by them from our Battery limit.
- Q. The applicant has informed that they have also sold some quantity of non domestic LPG to HPCL. Hence, it is requested to inform as to how the identification of 'LPG domestic' and 'LPG non domestic' is done by GAIL or by HPCL.
- R. The LPG produced at GAIL (India) Ltd., Usar is sold to HPCL user in the category of Domestic (used for household consumers through the OMCs (oil marketing companies i.e. HPCL, IOCL BPCL) or Non-Domestic (used for commercial consumers) as per requirement of HPCL as per end usage. The LPG in Domestic category & Non-Domestic category is identical and categorization depends only on end use identified by HPCL at the time of LPG supply to them.
- Q. Whether there is prior order in terms of quantity of LPG required for domestic use/non-domestic use. Whether at the time of sale to HPCL it is identified that LPG in said invoice would be consumed for domestic/non-domestic use and how is this done.
- R. HPCL Usar is the only customer of gas for GAIL user. The purchase requirements of HPCL Usar are normally communicated to GAIL formally through Email on day to day basis alongwith the details. Based on the communication, the LPG is delivered and the invoices are marked either for 'domestic use' or for 'non-domestic use' and different tax rates are applied accordingly. After HPCL receives the LPG, they issue to GAIL a certificate, specifying the weight of the LPG received and the intended use- domestic or non-domestic. Thus both the GAIL invoice and the HPCL Usar certificate received from the customer specify the end-use of the gas sold under the respective invoice. Copies of GAIL invoices, one for domestic and other for non-domestic use and the corresponding certificate received from HPCL are submitted. All of the other invoices issued and certificates received are prepared in a similar manner.
- Q. HPCL is certainly selling substantial number of Non-domestic gas cylinders just as they are selling domestic gas cylinders. Yet the sale of gas by GAIL to HPCL are claimed to be sale of gas for domestic use.
- R. For HPCL, Usar, the sole supplier of LPG is not GAIL. HPCL have their own refinery at Mumbai and one of the products of the refining process is LPG. This LPG is also used by HPCL for filling up the Non-Domestic cylinders. As per requirement, then

HPCL Usar asks GAIL to supply LPG to that extent under the Non-Domestic category. GAIL then supplies LPG under the Non-Domestic category and invoices accordingly. Thus, by and large, the domestic/non domestic LPG supplied by HPCL to its distributors is obtained from GAIL/other sources etc., as per procurement from GAIL as per their end use requirement. The rare of tax charged by GAIL makes no difference to the net revenue of the State Government, though it makes a difference to us.

A re-hearing in the matter was held on dt.30.04.2013 when Shri Dilip Dixit, STP attended and reiterated the arguments made earlier. A written submission was given during hearing. It was submitted that the claim is in respect of the entry 'LPG for domestic use'. It was argued that even though the entry C-58(b) was deleted during the relevant period, 'LPG for domestic use' being declared goods under the CST Act, the rate thereon cannot exceed 5%. As regards sale to HPCL and not to final consumers, it was submitted that the entry does not have such a restrictive interpretation. It was submitted that even HPCL does not sell it directly to consumers as there is further sale to distributors.

04. OBSERVATIONS

The issue involved is the rate of tax on supply of LPG by the applicant i.e GAIL to HPCL. Since the issue involved a disputed question of law, in response to the letter dt.10.06.2008 seeking clarification about the rate of tax on the supply of LPG, the applicant was asked to file an application for determination under the provisions of section 56 of the MVAT Act,2002. The present proceedings arise in view of the directions of the Hon. MSTT for giving an opportunity of fresh hearing to the applicant. The argument of the applicant in a nutshell is thus :

- a. GAIL supplies LPG, both domestic and commercial, to HPCL.
- b. HPCL further sells this LPG for domestic or, as the case may be, commercial use.
- c. The supply of LPG by GAIL to HPCL for domestic use is covered by the entry 'LPG for domestic use'.
- d. In terms of the period in respect of which a bill is submitted for determination, there is no specific entry for 'LPG for domestic use' under the MVAT Act,2002 and the same, therefore, falls in the residuary entry.
- e. 'LPG for domestic use' being declared goods, the tax thereon would be restricted to 5% even if the impugned goods are placed in the residuary entry.

I have elaborately put across the contention of the applicant. The bill presented for determination is of dt.07.04.2009. Hence, let me have a look at the entries under the MVAT Act,2002 as appearing then :

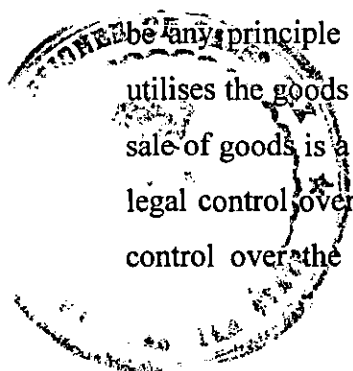
Schedule A	21A	L. P. G. supplied in cylinders containing upto 14.5 kg. of L.P.G., for domestic use.	Nil %	7.6.2008 to 31.3.2012
		Deleted		Deleted w.e.f. 1.4.2012
Schedule C	58(b)	LPG for domestic use sold on or after 18th April 2006.	4%	18.4.2006 to 6.6.2008
		Deleted		Deleted w.e.f. 7.6.2008
		Liquefied Petroleum Gas for domestic use.	3%	1.4.2012 to date

It can be seen from the above that in the period in consideration in the present determination proceedings, there is entry for 'L. P. G. supplied in cylinders containing upto 14.5 kg. of L.P.G., for domestic use'. Thus, the entry covers LPG for domestic use which is supplied **only** in cylinders containing upto 14.5 kg. of LPG. LPG for domestic use but not supplied in cylinders containing upto 14.5 kg. of LPG would not be covered by the scope of Schedule A under the entry 21A. Now, the applicant has himself informed that the supply of LPG to HPCL is through a dedicated pipeline whereas the entry 21A requires that the LPG is to be supplied in cylinders containing upto 14.5 kg. of L.P.G. Therefore, the coverage under this entry is without a blink ruled out.

There is no specific entry for 'LPG for domestic use but not supplied in cylinders' under the MVAT Act, 2002. Thus, 'LPG for domestic use other than in cylinders' is covered by the residuary entry E-1. The words 'LPG for domestic use' have no qualifications as to the manner of supply of LPG as in cylinders containing upto 14.5 kg. of LPG. The only condition is that the LPG should be for domestic use. Under the Central Sales tax Act, 1956, clause '(va) liquefied petroleum gas for domestic use' has been inserted w.e.f 1.4.2006 in section 14 of the Act for goods of special importance and as per section 15 of the said Act, the rate of tax on such declared goods shall not exceed 5%. Therefore, if it is the case that LPG is sold for domestic use then being declared goods, the rate thereon would be 5% inspite of being covered by the residuary entry E-1 under the MVAT Act. What the entry covers is LPG for domestic use. The only prerequisite is 'domestic use' and there is no other qualification as to the method of packing, container and weight thereof. Therefore, I have to ascertain whether the transaction evidenced by the aforementioned invoice qualifies for coverage in the above entry for declared goods.

To begin with, the applicant has informed that LPG is manufactured at their LPG Plant and supplied in bulk to HPCL through pipeline. The applicant was queried as to whether at the time of sale, it is possible to identify the end use of the LPG being sold i.e., domestic or otherwise. **The applicant has informed that LPG in Domestic category & Non-Domestic category is identical and categorization depends only on end use identified by HPCL at the time of LPG supply to them.** The applicant has come up with certain documentation such as Email by HPCL to GAIL about requirement of LPG

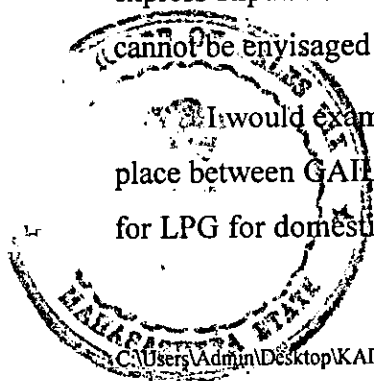
alongwith the details, invoices raised by GAIL (domestic and non-domestic) and the corresponding certificate issued by HPCL after receipt of the LPG. Since the evidence furnished by the applicant pertained to the current period, the applicant was asked to furnish the same for the bill period. The applicant has given a copy of 'LPG DESPATCH REPORT' both for the current as well as 2009-10 period. This certificate is signed by GAIL and HPCL representatives. A point to be noted with regard to this Report is that there is handwritten mention of 'Domestic' and 'ND LPG' in the current Report and no such mention in the Report for the 2009-10 period. This could point out that the applicant had no marking scheme for 'domestic' and 'non-domestic' LPG during the bill period. The coverage by the entry rests solely on the fact that the LPG sale should be for domestic use. Now, the applicant himself informs that domestic or non-domestic LPG are identical. Besides HPCL sells LPG for domestic as well as for other use. The use of LPG for domestic or, as the case may be, otherwise depends solely on the treatment of the same by HPCL or further down the line. It is only after sale is made by HPCL or further down the line that it would be known whether the goods were for domestic use or otherwise. In these circumstance, I revert back to the entry. The entry in specific and certain words covers 'LPG for domestic use'. The certain event is the 'domestic use' and therefore coverage under this entry is possible only when such use is found. There is sale by GAIL to HPCL and this sale attracts tax as per the rate prescribed under the MVAT Axt,2002. It cannot be the case that a levy could be kept pending for want of fulfillment of certain conditions. The legislature cannot keep an entry's applicability contingent on the happening of a future event. The applicant does not himself sell the LPG for domestic use. The supply of LPG for domestic use depends solely on the treatment by HPCL or further down the line. The applicant does not have any occasion to bring about such use. In these circumstances, a levy of tax on a completed sale at a concessional rate on the basis of a future event would not be in keeping with the intent of introducing the entry. There is nothing in the law which obligates the purchaser of goods to give any information to the vendor as to the purpose for which the goods are being purchased. Assuming for the sake of argument that under the entry under consideration, the purchaser is obliged to give such information, there is nothing either in the Act or in the body of general law which obligates the purchaser not to deviate from the intention declared at the time of the purchase of goods. At any rate, there does not appear to be any principle of law which confers a right on the vendor to insist that the purchaser utilises the goods only for the purpose declared at the time of the sale transaction. Since the sale of goods is a transfer of property from the vendor to the purchaser, the vendor loses all legal control over the goods sold, the moment the title in the goods passes and the factual control over the goods when they are delivered. This requirement of end-use becomes



imperative in a situation where the product has uses other than as specified such as LPG for domestic, commercial use whereas the entry is limited only to domestic use. There may or may not be violations after a sale for certain domestic use has been made. I am not on that point. My concern as far as the MVAT Act, 2002 is concerned is to interpret the law as laid down by the legislature in its correct sense and to ensure that there is discharge of tax at the appropriate rates. In order to be said to be used for domestic purpose, the impugned LPG needs to be sold to a household and this is not the case in the issue at hand. The very expression "domestic use" connotes the primary use of the LPG in households and not for commercial purposes. The issue before me is as to how prior to sale or disposal by HPCL or further down the line could the applicant ascertain that the sale would be for domestic use only and accordingly levy tax at the rate prescribed for such domestic use. The evidence sought to bring forward by the applicant fails to make a point as it is inherently clear that the applicant would not be having any say over the intended use of the LPG. The certification by HPCL about certain quantity being sold not for commercial but domestic use does not serve the purpose as it does not satisfy my very primary question as to the basis on which GAIL at the time of its sale to HPCL would be pre-supposing that a further sale of the very goods would be for domestic use only. Such a supposition even before a sale has been effected by HPCL is not in keeping with the principles of the entry and therefore such a transaction could not be said to be covered by the declared goods entry for 'LPG for domestic use'. The Hon. Court in Swaraj Printers' case [1973 31 STC 559] has observed that - *While the taxing provision has to be liberally construed in favour of the subject, the same principle is not applicable in construing an exemption.* In the present case, the concessional rate of tax is applicable to 'LPG for domestic use' only and therefore, a liberal interpretation in terms of pre-supposing the future course of events to fit the same within the constraints of the entry would be stretching the legal provision far too much. More so when the statute has a means to ensure that the future event would be coming under the taxation net. The Legislature adopts various drafting techniques for expressing its intentions. Whenever the statute intends that a tax exemption or concession should be available to only those cases where the particular end-use is established before the authority, the law makes an express stipulation in that regard. It is equally true that in the absence of any such stipulation, such a requirement cannot be read into the statute. In the present case, there is an express stipulation that the entry would cover only sale of LPG for domestic use and which

cannot be envisaged in the immediate transaction between GAIL and HPCL.

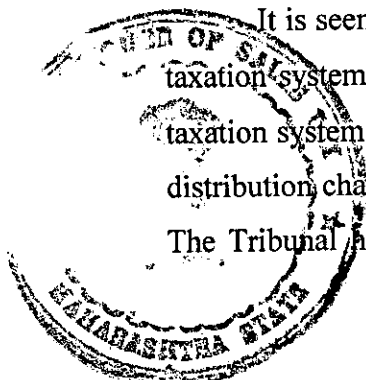
I would examine the issue on yet another aspect. The transaction before me has taken place between GAIL and HPCL. The immediate buyer of LPG is HPCL. The schedule entry for LPG for domestic use is to be interpreted in such a way that the tax is exempted only on



that LPG which is directly sold to domestic consumers. Therefore, the LPG sold through pipeline by GAIL to HPCL does not come within the expression LPG for domestic use simply because HPCL is not the domestic consumer who has bought the LPG for domestic use but in fact sold it further by packing it in 14.5 Kg cylinder. It is true that the Tribunal in the case of JCL International (S.A. No.568 of 2008 and 703 of 2008 dt.30.1.2009) has held that LPG sold to distributors in cylinder is covered by the expression 'LPG used for household purposes'. The appellant in this case, was an importer of LPG who bottled LPG in cylinder and supplied it to the distributor. The distributor in turn supplied the LPG in cylinder to the intermediate dealers or the final consumers. It is observed by the Tribunal that as per the scheme of the BST Act, the importer bottled the LPG and supplied LPG to the distributor. The first sale is liable for tax considering first point taxation and therefore incidence of tax is when the appellant has supplied the goods to its distributor. It further observed that there is nothing in the scheme of the BST Act to levy tax when the goods are finally consumed by the last purchaser in the chain of commodity distribution. The Tribunal accepted the contention of the appellant that there is no specific machinery provided in the Act to levy tax only after it is actual use is proved which is practically not feasible. Also it observed that final use of the commodity cannot be a decisive criterion for classifying the commodity. **The Tribunal based its observations upon the fact that the assessing authority had not proved that the LPG supplied by the appellant was sold to industrial unit and not to house-hold. Also it was not brought on record whether the actual consumers have utilised LPG for commercial purpose.** The Tribunal also observed that,

".....in case of LPG used for house-hold as specified in schedule entry C-II-57, the mechanism of supplying such commodity has not been prescribed. If it was an intention of the legislature to allow the concession only if LPG is supplied to house holder then it could have specifically provided the mechanism of distribution of such commodity. In a single point first stage taxation system the sale of commodity is liable for tax when the goods are manufactured or imported and sold to the consumer in the State at the first stage. The levy of tax cannot depend upon the final use of commodity by the consumer. In the present case, the LPG has been supplied by the appellant to its distributor who in turn sold the goods to the consumers through intermediate dealers and the taxation system would be totally unworkable if we accept the submission of the revenue that rate would be depend upon the final use of such commodity by the consumer distribution chain. The instance of tax cannot be postponed till it is proved how the commodity sold or used by the final consumer and therefore it is held that LPG supplied by the appellant was house-hold purpose considering its predominant or general use as a fuel for domestic purpose."

It is seen from the above that the observations of the Tribunal are with respect to the taxation system prevalent under the BST Act. Under the BST Act there was a first point taxation system and therefore the end use of the product which could take much later in the distribution chain could not decide instances of tax which has taken place at the first stage. The Tribunal has based their observation specifically within the framework of the single



point taxation system under the BST Act. In such scenario, the observation of the Tribunal cannot be made applicable to the VAT system which provides for multi-point taxation. If the transaction before the Tribunal had taken place under the VAT system then tax would have been levied at every stage. The verifying authority therefore could ascertain the use of the product and more specifically the end user of the product at every stage. The system makes it easy to decide to whom the product is sold, because at every stage the transaction is subject to tax. In the present case therefore when GAIL sells to HPCL, HPCL being not domestic consumer the transaction would be subjected to tax. However, when HPCL sells to domestic consumers directly then the Act because of its multi-point system provides its mechanism to check whether the sale by HPCL was to domestic consumers or otherwise. Therefore, the Tribunal judgment is not applicable in the present case.

The applicant has argued that what is intended by the expression 'for domestic use' is that the last or final use of the commodity should be a domestic use and not the first purchaser. The applicant has also made a reference to the construction of some entries to advocate his case. I have to disagree with the same as the entry by way of specific mention of the words 'for domestic use' has laid down an intrinsic bar to the goods sought to be covered by the entry. Unless and until, use of the goods is very evident and seen on the face of the transaction, coverage under this entry would not be possible.

In view thereof, I am satisfied that the claim under the declared goods entry for 'LPG for domestic use' is fundamentally misplaced. Therefore, the sale evidenced by the impugned transaction would attract the rate of tax of 12.5% and not 5% as per the entry for declared goods.

05. The applicant has sought to invite my attention to the fact about being informed by two branches of the Department that the impugned product would be covered by the schedule entry C-58(b). After the enactment of finance bill, w.e.f. 18.4.2006 'LPG for domestic use' was brought under the scope of declared goods u/s.14 of the CST Act and consequently schedule entry C-58(b) was introduced under the MVAT Act to cover 'LPG for domestic use sold on or after 18th April 2006'. This entry was subsequently deleted w.e.f. 7.6.2008. A new entry was introduced from 7.6.2008 to cover 'LPG supplied in cylinders containing upto 14.5 Kg of LPG for domestic use' in the form of schedule entry A-21(A). However, LPG for domestic use but not covered by schedule entry A-21A could not be taxed at more than 5% by virtue of it being declared goods. On a reference by the applicant through letter dt.16.6.2006, it was informed to the applicant by letter dt.29.2.2008 that the sale of LPG would be covered by schedule entry C-58(b), which was the entry introduced under schedule entry C-58(b) after the declaration of LPG for domestic use as declared goods.

However in the representation made by the applicant at that time the applicant had not clarified in his letter as to whether the LPG supplied by GAIL was in pipeline. It was only in the letter dt.10.6.2008 that the applicant informed that the LPG was supplied in bulk through pipeline and so the applicant was requested to apply for a determination through letter dt.5.2.2009. Thus the impression as given in the representation was that the supply of LPG by GAIL to HPCL was in 14.5 Kg cylinder and therefore meant for domestic use. Therefore, it is made clear to the applicant that there was no statutory misguidance in this matter as the representation made was inadequate and did not convey the whole information. I therefore hold that the sale of LPG by GAIL to HPCL through Invoice No.MA004001 dt.7.4.2009 is taxable @ 12.5% being covered by schedule entry E-1 of the MVAT Act,2002.

06. In the backdrop of the discussion held herein above, it is hereby ordered that –

ORDER

(under section 56(1)(e) of the Maharashtra Value Added Tax Act,2002)

DDQ-11-2011/Adm-3/18/B- 1

Mumbai, dt. 31/9/2013

The transaction of sale of LPG by GAIL to HPCL through Invoice No.MA004001 dt.7.4.2009 is taxable @ 12.5% being covered by schedule entry E-1 of the MVAT Act.




(DR. NITIN KAREER)

**COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI**