IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/00156/2012

[arising out of Order-in-Original No.31/2011, dated 14.12.2011 passed by the Commissioner of Central Excise, Chennai-II]

M/s. ISLAND AVIATION (INDIA) PVT. LTD., APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, CHENNAI - II RESPONDENT

Appearance:

For the Appellant	Ms. Radhika Chandrasekhar, Adv.
For the Respondent	Shri B. Balamurugan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **29-03-2019**

FINAL ORDER NO. **40640 / 2019**

Per Bench:

After hearing both sides, we find that the issue comes for dispute involved demand of service tax in respect of the difference between the price as per the rate list of the airline and the selling price, namely, profit made on the difference between the purchase rates and the sold freight rate. We find that the matter is no longer *res integra* and in respect of the same appellant the issue has been decided in their favour in Final Order No.40156-40157/2019, dated 18.01.2019. The relevant portion of the said decision on identical facts is reproduced below:-

"4. Heard both sides.

5.1 The service tax demand is raised under BAS. The appellant has countered the allegations in the show cause notice stating that they are engaged not only as general sales agent but also receive income in the form of trading of cargo space. For whatever commission received as general sales agent, undisputedly the appellant has discharged the service tax. On perusal of the annexure to the show cause notice, it is seen that the alleged amount of taxable value has been arrived from the difference between the sale price and the purchase price of the cargo slot.

5.2 Malaysian Airlines and the appellant have entered into an agreement whereby appellant is appointed as a General Sales Agent of Malaysian Airlines. Clause 9(1) of the said agreement is crucial for analyzing the issue under consideration. The same is extracted as under:-

> "The General Sales Agent shall claim sales commission of 5.0% (five percent) of the IATA's published rate for the services of MAS and on any through air transportation connection with the services of MAS in accordance to IATA Resolutions 801 and 801a(II). <u>However, where MAS and the General Sales Agent have a prior specific rates arrangement relating to the transportation of any consignment on any particular route, the General Sales Agent is not entitled to any commission</u>."

6. As per clause 9, it is seen that the Malaysian Airlines and the appellant has some arrangement with regard to the rates of the cargo slots which can be sold by the appellant. For slots, for which there is specific rate arrangement between the parties, the appellant is not entitled to any commission. Thus, the appellant purchases the cargo slots and thereafter sells the same to customer/exporters. The difference between sale price and the purchase price of the cargo slot is sought to be brought within the ambit of commission by the department. In such transaction, it is specifically stated in clause 9 that the appellant is not entitled to commission. In fact, for transactions as a General Sales Agent, the appellant is entitled to commission as per IATA regulations. In other transaction of sale of cargo space of specific agreed rates, it is not specified that appellant is eligible for any consideration. This means the appellant can sell such cargo slot at any rate. Sometimes the appellant may make profit and sometimes may incur huge loss in such sale also. This kind of transaction indicates that the appellant is not acting as a general sales agent while trading of cargo space in the capacity of an independent buyer. In other words, only when the appellant is acting or selling the cargo space on behalf of Malaysian Airlines, he acts as general sales agent and receives commission. At the cost of repetition, it is stated that the appellant has discharged service tax on such commission received by them and the demand is confined to the difference between sale price and purchase price of cargo slot only. The Tribunal in the case of *Airogo Travels and Cargo Pvt. Ltd.* (supra) had occasion to analyze a similar issue. It was held that the amount received by sale of cargo is only trading of cargo space and is not subject to levy of service tax. The Tribunal therein had followed the decision in the case of *Commissioner of Service Tax, New Delhi Vs. M/s. Karnam Freight Movers* reported in *2017 (4) G.S.T.L. 215 (Tri. Del.).*

7. Appreciating the facts of the case, we have no hesitation to conclude that the transaction sought to be brought within the net of service tax levy in the present proceedings does not fall under BAS. The demand therefore cannot sustain. The impugned order is set aside and the appeals are allowed with consequential relief, if any.

2. We do not find any new reasons or ground to deviate from the above view taken by us. In the event, the impugned order cannot sustain and will be required to be set aside, which we hereby do. Appeal is allowed with consequential benefits, as per law.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
04-04-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	**29.03.2019**			
Draft Order - Date of typing	**02.04.2019**			
Fair Order Typing	**04.04.2019**			
Date of number and date of dispatch	**04.04.2019**			