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

ST/106/2009

(Arising out of Order-in-Appeal No. 151/2008 (ST) dated 19.12.2008 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Assisi Travels — Appellant

Vs.

Commissioner of Central Excise, Tirunelveli — Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **20.11.2017**

Final Order No. 43001/2017

Per Bench

The appellants are registered with the Service Tax Department for providing air travel agent service. On the basis of intelligence that the appellants are not discharging service tax liability, a show cause notice was issued for the period from 1.4.1999 to 30.6.2004 alleging short-payment of service tax. After due process of law, the original authority confirmed the demand of Rs.5,65,188/- along with interest and imposed combined penalty of Rs.2 lakhs under sections 76 and 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals) set aside the penalty but however upheld the demand of service tax along with interest. Being aggrieved the appellants are now before the Tribunal.

2. On behalf of the appellant, ld. counsel Shri M. Kannan submitted that originally the partnership firm, by the very same name and style, was run by the son of the appellant herein. The said partners died in an accident on 27.8.2000. Thereafter, the firm was inherited by their parents Shri M. Parthalome and Smt. N. Maria Rengitham as legal heirs. Thereafter, the appellant firm was re-registered with the new set of partners and obtained new service tax registration on 18.9.2001. However, the original name and title was continued by the new partnership firm. He therefore submitted that the demand prior to 27.8.2000 will not sustain since the partnership firm constituted by the original partners is no longer in existence as it has been dissolved by the death of the partners. With regard to the demand after 27.8.2000, he submitted that an amount of Rs.69,37,082/- is to be excluded from the total taxable service as the said amount is with respect of the refund of air tickets. The appellant had refunded the said amount to the customers and therefore the department has erred in including the said amount while

arriving at the demand. It was also argued by the ld. counsel that the appellant had opted to pay service tax on the basis of basic fare. That since they have an option to pay on commission basis, the same may be allowed.

3. The ld. AR Shri K.P. Muralidharan reiterated the findings in the impugned order.

4. Heard both sides and perused the records.

5. The foremost contention raised by the ld. counsel is that the demand prior to 27.8.2000 will not sustain as the original partnership firm would stand dissolved with effect from 27.8.2000 due to the demise of both the partners. It is brought out from evidence that the said original partners had died in an accident on 27.8.2000 and the said firm was thereafter reconstituted with new set of partners and it had obtained new service tax registration. The ld. counsel has relied upon the decision of the Hon'ble Supreme Court in the case of Shabina Abraham Vs. Collector of Central Excise and Customs – 2017 (50) STR 241 (SC), wherein it has held that in the absence of machinery provision in the legislation for proceeding against legal heirs of deceased, duty / tax and other sums do not become "payable" so as to apply the recovery provisions under section 11 of the Central Excise Act, 1944. Thus, from the facts and evidence placed before us, since the firm has obtained new service tax registration, we are of the opinion that the demand

prior to 27.8.2000 will not sustain which requires to be set aside, which we hereby do.

6. The second contention put forward by the ld. counsel is that the Revenue has included the amount repaid / refunded to the customers. This issue has not been considered by the authorities below. The said issue requires verification and for this matter, we are of the view that the matter has to be remanded to the adjudicating authority. The contention of the appellant's counsel that they have to be given an option to discharge the service tax liability on the basis of commission received is not tenable as the appellant has already exercised the option to pay the service tax on the basis of basic fare. The option once exercised cannot be varied during the financial year. For this reason, the said plea raised by the appellant is rejected.

7. From the discussions made above, we are of the view that the matter requires to be remanded to the adjudicating authority who shall verify and compute the demand of service tax on the basis of discussions made above. In doing so, he shall take into consideration that the demand prior to 27.8.2000 is not sustainable. The plea of the appellant with regard to the refunded amount having been included in the total value of taxable services shall be verified and looked into

by the adjudicating authority. The appellant shall be given an opportunity of personal hearing.

8. In the result, the impugned order is set aside and the appeal is allowed by way of remand in the above terms.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / CHENNAI

Customs, Excise & Service Tax Appellate Tribunal