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

ST/142 & 185/2008

(Arising out of Order-in-Revision No. 2/2008 dated 25.3.2008 passed by the Commissioner of Service Tax, Chennai and Order-in-Appeal No.24/2008 (MST) dated 11.7.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.Transair International Pvt. Ltd. — Appellant

Vs.

Commissioner of Service Tax, Chennai — Respondent

Appearance

Ms. Radhika Chandrasekar, 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: **08.08.2017**

Final Order Nos. 41540-41541/2017

Per Bench

The appellants are registered with the Service Tax Department under the category of 'Air Travel Agent Service'. On specific intelligence that the appellants have received income by way of overriding commission (ORC) and also on the view that such amount would be consideration for Business Auxiliary Service, department issued show cause notice. After due process of law, the original authority confirmed the demand along with interest and also imposed penalties under section 76 and 77 of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the same. Meanwhile, the department had issued a notice under section 84 proposing in review of the order on the ground that no penalty was imposed under section 78 of the Finance Act, 1994. By such ~~review~~ Revision order dated 25.3.2008, the Commissioner has imposed penalty under section 78 against which the appellant has filed Appeal No.ST/142/2008. Appeal No. ST/185/2005 is filed against the order of Commissioner (appeals) who upheld the confirmation of demand and also the interest and penalty.

2. The issue whether overriding commission is subject to levy of service tax has been discussed in detail by this Tribunal vide Final Order No. 41400 to 41407/2017 dated 4.8.2017 in the case of Arafaath Travels Pvt. Ltd. The Tribunal held that even if the payment is received in India rupees such retention will have to be necessarily treated as saving of foreign exchange and by implication is akin to receipt of moneys in convertible foreign exchange. In the said case, the appellant had retained that portion of the overriding commission and the same was not sent to the service recipient along with the other sale proceeds. In the present case, it is undisputed that the appellants were receiving foreign currency in convertible

foreign exchange. In the present case also, there is no dispute that the commission was received from abroad into India in convertible foreign currency. The only dispute raised by the department is that such commission was first received by the Indian office of the appellant's client who in turn transferred the amount in Indian rupees to the appellant.

3. Following the decision of the Tribunal in the case of Arafaath Travels (supra), we hold that the demand is not sustainable and we set aside the both the impugned orders and allow the appeals with consequential relief, if any.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै/Chennai