IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41517 of 2015

(Arising out of Order-in-Appeal No. No.100/2015 (STA-II) dated 01.04.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai)

Translanka Air Travels (P) Ltd., **...Appellant**
No.4, Vijaya Towers, Kodambakkam High Road,
Nungambakkam, Chennai 600 034.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

For the Appellant : Ms. Radhika Chandra Sekhar, Advocate
For the Respondent : Shri. Sanjay Kakkar, Authorised Representative

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41480/2025

DATE OF HEARING: 02.09.2025
DATE OF DECISION:17.12.2025

Per AJAYAN T.V.

The appellant, Translanka Air Travels (P) Ltd., is challenging the Order-in-Appeal No.100/2015 (STA-II) dated 01-04-2015.

2. Brief facts as culled out from the appeal records are that the appellant is registered as a service provider of air travel agent service and cargo handling service. The appellant is stated to have been appointed by M/s. Sri Lankan Airlines Ltd., (SAL) as their GSA as per the agreement dated 07.11.2003 and 27.03.2003. The terms of remuneration for GSA provided for payment of overriding commission (ORC) by SAL to the appellant calculated by SAL on the basis of the prorated value net of agency commissions where applicable of all traffic documents issued within the area for transportation on the services of the airline and actually uplifted by the airline.

3. Pursuant to investigation conducted, the appellant was earlier issued with three show cause notices for the period 2006-07, 2007-08 and 2008-09 on the allegation that the services provided by the appellant was business auxiliary services on which the appellant was liable to pay service tax. The present notice for the subsequent period from April 2009 to March 2010 has been issued stating that all the allegations made in the earlier notices may be considered as part and parcel of the present notice. While the appellant had claimed exemption from payment of service tax stating that the services provided by the appellant to SAL was export of services, the department had issued the notice being of the view that the area where the appellant was providing services, demarcated the territorial jurisdiction for providing the services of GSA to the states of Tamil Nadu, Pondicherry, Karnataka, Northern and Central Kerala and since the services are provided to SAL within the limits of the specified territory within India, the benefit of export of service claimed is not tenable. This is so, according to the Department, for the reason that as per the proviso to Rule 3(3)(i) of the Export of Services Rules 2005, one of the conditions is that the services is to be delivered outside India and used in business outside India, whereas in the present case the appellant is providing the GSA services within the specified territory in India and further action outside India is taken care of by the Airlines themselves. The present show cause notice also alleged that the scrutiny of the appellants records revealed that the appellant had received income under the head contract fees and that the amount collected as contract fees appears to be not in relation to any facilities, but an income in relation to the services rendered by the appellant to SAL, though in the GSA agreement, there is no specific clause about payment of any amount as contract fees for any specified purposes. The notice therefore alleging contravention of the provisions of the Finance Act 1994 required the appellant to show cause as to why the exemption wrongly availed under the Export of Services Rules 2005 for their services as GSA to SAL within select states in India should not be denied and by the amount received as contract fees with reference to GSA agreement should not be treated as part of taxable value of GSA service under business auxiliary service. The notice proposed a

demand of service tax of Rs.27,38,921/- as detailed in the annexure and along with applicable interest and proposed penalties under section 76 and 77 of the Finance Act. In the annexure to the notice, the demand was quantified as passenger and cargo overriding condition.

4. Ms. Radhika Chandrasekhar, Ld. Advocate appearing for the appellant contended that the business auxiliary services falls under section 65 (105) (zzb) and the said services are considered to be export of services in terms of Rule 3 (i) (iii) (c) when such services are provided in relation to business or commerce to a recipient located outside India. So, far as business auxiliary services are concerned the condition is that the client must be located outside India. She submits that the agreement clearly demonstrates the location of the client and hence there is no justification for imposing service tax. It is further submitted that this tribunal ***in the appellant's own case for the period 1-4-2006 to 31-03-2007, vide Final Order No.41935/2017, dated 31-08-2017***, has allowed the appeal on the ground that the service recipient is located outside India and the ORC was received in foreign currency. She places reliance on a subsequent decision in their own case, vide ***Final Order No.40361-40362/2018*** and also the decision in the case of **Arafaath Travels Pvt Ltd. versus CST, vide Final Order No.41400-41407/2017, dated 4-08-2017.**

5. Ld. Counsel submits that the demand of service tax and the business auxiliary services on the contract fees is untenable as the said amounts are received for providing and maintaining a furnished office as per the requisite of Sri Lankan Airlines and is integrated in the GSA agreement. It is also submitted that the Commissioner (Appeals) has referred to Rule 5 (1) of the Service Tax (determination of value), Rules 2006 and had observed that the appellant does not qualify as a pure agent. She further submits that though the show cause notice has proposed demand of service tax on ORC as well as the contract fee, the notice has since quantified the demand of service tax only on the ORC as is evident from the

annexure to the show cause notice and there is no separate amount indicated with respect to the contract fee.

6. Shri. Sanjay Kakkar, Ld. Authorised Representative, appearing for the responded, reiterated the findings of the Ld. appellate authority impugned order in appeal. He submits that there is a distinction between performance of service within the territory and performance of service outside and the activity of the appellant as a GSA such as generating passenger traffic, sales and transportation of cargo is rendered within India in the territories specified and is therefore not provided to SAL outside India, so as to qualify as export of service. Since the services provided by the appellants benefited only the consumers in Indian territory, it has to be treated as service provided within India.

7. Heard both sides, perused the appeal records and the decisions submitted.

8. We find that the only issue that arises for determination is whether the appellant's services by way of its activity as the GSA for SAL amounts to export of service and thereby exempted from payment of service tax.

9. We find that a coordinate bench of this Tribunal in the appellant's own case by ***Final Order No.41935/2017 dated 31-08-2017 in Service Tax Appeal No.ST/140/2009,*** arising out of OIO No.134/2007 dated 17-12-2007 passed by the Commissioner of Service Tax, Chennai, has rendered a finding on the issue involved in the appellant's favour. The relevant portions of which are reproduced below: -

> *The issue involved in the above appeal is that the demand of service tax on the overriding commission received*
> *by the appellant on account of the services rendered under the General Sales Agency Agreement Service entered with Srilankan Airlines.*
> *2. On behalf of the appellant, Id. Counsel Ms. Nandita Doss submitted that the issue stands covered by the decision of the Tribunal in the case of Arafaath Travels Vs. Commissioner of Service Tax, Chennai vide Final Order No. 41400 to 41407/2017 dated*

4.8.2017, wherein it was held that the activity carried out under General Sales Agency Agreement, on behalf of a foreign airline amounts to export of service. The Tribunal had relied on the Hon'ble Supreme Court's judgment in the case of JB. Boda & co. (P) Ltd. vs. CBDT (1997) 223 ITR 271 wherein it was held that consideration retained by the Indian party is to avoid two way traffic of money and therefore it amounts to receipt of convertible foreign exchange. The Tribunal had also relied upon the decision of the jurisdictional High Court in the case of Supraseh General Insurance Services and Brokers Pvt Ltd. reported in (2015) 62 taxmann.com 364.

3. The learned AR Shri S. Govindarajan reiterated the findings in the impugned order.

4. The issue is whether overriding commission received by the appellant is subject to levy of service tax when the same has been retained by the appellant has been decided by the above judgments relied upon by the Ld. Counsel for the appellant. Following the same, we are of the considered opinion that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief if any.

10. We find that again the matter has been decided in the appellant's favour by ***Final Order No.40361-40362/2018 dated 7-2-2018 in Service Tax Appeals No. 368 &369/2010*** arising out of OIO No.5 & 6/2010 dated 29-01-2010 passed by the Commissioner of Service Tax Chennai. Revenue has not shown to us that the aforesaid Final Orders in the appellant's own case have not attained finality.

11. We find that the present SCN has been issued categorically asserting that the allegations made in the earlier notices are considered as part and parcel of the present notice. The present notice further alleges that the appellant is not entitled to claim exemption under Export of Service Rules, 2005 on the only reason that ORC is received in convertible Foreign Currency. Since the issue of whether the overriding commission received by the appellant is subject to levy of service tax which have arisen in the appeal proceedings pertaining to the adjudication of the earlier notices issued to the appellant, stands already decided in the appellant's favour vide the aforesaid Final Orders in the appellant’s own case, we do not find any new grounds or reasons to deviate from the view taken therein. As regards the

allegations pertaining to contract fees received, we find that the appellant is right in its submission that the SCN has not made any quantification in respect of the same and the demand quantified pertains only to the overriding commission as per the annexure to the show cause notice. Therefore, we are of the considered opinion that demand on this count is unsustainable.

12. For the reasons mentioned above and respectfully following the decisions cited supra, we set aside the impugned order in appeal.

The appeal is allowed with consequential relief(s) in law, if any.

(Order dictated and pronounced on 17.12.2025)

(AJAYAN T.V.)	**(M. AJIT KUMAR)**
Member (Judicial)	Member (Technical)

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