CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 51263 OF 2017

(Arising out of Order-in-Original No. DLI-SVTAX-001-COM-016-16-17 dated 02.08.2016 passed by Commissioner, Service Tax, Delhi-II)

M/s. Trans Bharat Aviation Pvt. Ltd. **...Appellant**
Plot No. 69, Ground Floor,
Patparganj Industrial Area,
New Delhi-110019

versus

Principal Commissioner of Service Tax, **...Respondent**
Service Tax Commissionerate, Delhi-I
New Delhi-110019

APPEARANCE:

None for the Appellant
Shri Harsh Vardhan, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/ Decision: 03.05.2023

FINAL ORDER NO. 50613/2023

Justice Dilip Gupta:

M/s. Trans Bharat Aviation Pvt. Ltd.[1] has assailed the order dated 02.08.2016 passed by the Principal Commissioner of Service Tax, Delhi[2]. This order:

(i) Confirms the demand of service tax amounting to Rs. 2,45,50,030/- under the taxable category of 'supply of tangible goods'[3] under section 65(105)(zzzzj) of the Finance Act 1994[4];

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1. the appellant
2. the Principal Commissioner
3. STG
4. the Finance Act

(ii) Confirms the demand of service tax amounting to Rs. 75,55,212/- under the taxable category of 'management, maintenance or repair service' under section 65(105)(zzg) of the Finance Act; and

(iii) Directs for interest and penalty under sections 75, 77, & 78 of the Finance Act.

2. The case has been called out but no one has appeared on behalf of the appellant. Even on 17.03.2023 when the matter was last taken up, no one had appeared on behalf of the appellant and the following order was passed.

> "Case has been called out but no one has appeared on behalf of the appellant. It is stated by the learned authorized representative appearing for the Department that the matter is covered by the various decisions of this Tribunal in **Global Vectra Helicorp Ltd.** v/s. **Commissioner of Service Tax, Mumbai**[5]**, M/s. EIH Ltd.** v/s. **Commissioner of Central Excise, Delhi-I**[6] and **M/s. Chimes Aviation Pvt. Ltd.** v/s. **Commissioner, Service Tax, New Delhi-II**[7]. List on May 03, 2023. It is made clear that the matter would be decided on merits even if the appellant does not appear on the said date."

3. In such circumstances, Dr. Radhe Tallo, learned authorised representative appearing for the respondent has been heard and the records have been perused.

4. The appellant was supplying aircraft/helicopter owned by it to various entities for their use. The said services were being rendered by the appellant to the service recipient on mutually agreed terms and conditions. While providing the said helicopter/aircraft on charter hire, it supplied its own crew i.e. pilot and other flying staff along with

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5. 2016 (42)S.T.R. 118 (Tri. Mumbai)
6. 2019 (24) GSTL 592 (Tri-Delhi)
7. 2022 (I) TMI 1016-CESTAT, New Delhi

the said helicopter/aircraft, keeping an effective control and possession of the said helicopter/aircraft with them.

5. The appellant believed that the services provided would fall under the category of "transportation of passengers by air"[8] under which it discharged with service liability.

6. The issue involved in this appeal is as to whether the service provided by the appellant would fall under TPA or STG category. This issue has been considered and decided by a Division Bench of this Tribunal in **Chimes Aviation Pvt. Ltd.** and it has been held that the appellant therein had provided STG services which became taxable w.e.f. 01.07.2010 and the relevant portions of the order are reproduced below:

> "20. The issue that arises for the consideration in the appeals is as to whether the services provided by the appellant would fall under the category of TPA or STG. To resolve this issue it would be necessary to examine whether the appellant was providing TPA service w.e.f. 01.07.2010 or was providing a service in relation to supply of aircraft/helicopter without transferring the right of possession and effective control, which service would fall under the category of STG w.e.f. 16.05.2008.
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> 21. The finding recorded by both the adjudicating authority and the appellate authority is that the appellant had supplied aircraft/helicopter belonging to the appellant to various entities on the terms and conditions mutually agreed upon and while providing the helicopter/aircraft on charter the appellant had provided its own pilot and other flying staff and kept the effective control and possession over the said helicopter/aircraft with itself. It is for this reason that the services provided were categorized under STG w.e.f. 16.05.2008, which also continued to remain taxable w.e.f. 01.07.2012.
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> 22. The contention for learned counsel for the

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8. TPA

> appellant is that the services were actually rendered to the passengers as it is they who were transported in relation to non-scheduled air transport by the aircraft operator.
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> 23. This submission of learned counsel for the appellant cannot be accepted. It has been found by the Commissioner (Appeals), on a perusal of the various invoices, that it was the aircraft/helicopter that was hired against money consideration which was a lump-sum amount irrespective of the number of passengers, as even the details of the passengers were not indicated in the invoices. No document has been shown by learned counsel for the appellant which may dispel this finding. If passengers were to be transported, certainly tickets would have been issued to them and the invoices would also indicate the amount received from the individual passengers, but it is not so."

7. The Tribunal also held that penalties had been validly imposed upon the appellant.

8. In view of the reasons stated in the aforesaid order of the Tribunal in **Chimes Aviation Pvt. Ltd.**, there is no error in the order passed by the Principal Commissioner. The appeal is, accordingly, dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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