CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COURT No. III

Service Tax Appeal No. 51544 of 2017

(Arising out of Order-in-Appeal No.87/ST/APPEAL-II/ggm/2017 dated 15.05.2017 passed by the Commissioner of (Appeals), Central Excise Building, Plot No.36 & 37, Sector 32, Medicity, Gurgaon)

SRC AVIATION PVT. Ltd.
Suit No.507, G-5 Building Terminal 1,
IGI Airport, New Delhi-110037. **Appellant**

Vs.

Commissioner of Service Tax,
Central Excise Building, Plot No.36 & 37,
Sector 32, Medicity, Gurgaon. **Respondent**

APPEARANCE:
None for the Appellant
Mr. Harshvardhan, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51706 /2023

Date of Hearing/Decision: 19.12.2023

PER:SOMESH ARORA

None appeared for the party. The same was the case earlier also and drawing our attention to the last order, learned Authorized Representative has objected categorically, praying that the matter may be decided. Accordingly, we proceed in the matter.

2. Learned authorized representative brings to our notice the fact that initially the proceedings were initiated for rejection of refund vide Order-in-Original dated 21.12.2016 and also order dated 14.03.2016, *inter alia,* challenging the assessment of the party. It was claimed that the export of service was involved which were in the nature of aircraft maintenance and that the clients of the appellant were located outside India including in the present case. Rejection of refund on the ground

that no export of service had taken place was challenged by the party which was disposed of in favour of the Revenue. The Commissioner (Appeals), upheld the Order-in-Original dated 15.05.2017. The matter has been agitated further by the party in the present proceedings. Aggrieved by the order of the Commissioner (Appeals), the appellant is in appeal.

3. Learned Authorized Representative took us through the decision relied upon in the finding by the Commissioner (Appeals) and reiterated the same.

4. Learned Authorized Representative has relied upon the findings of the Commissioner (Appeals) and has referred to latest decision of Hon'ble Delhi High Court, which is jurisdictional High Court in the matter of BT India Pvt.Ltd. vs. Union of India and others- MANU/DE/7485/2023 which in turn has relied upon decision of Hon'ble Apex Court in the case of ITC Ltd. vs. Commissioner of Central Excise Bombay MANU/SC/1284/2019: (2019) 17 SCC 46 (SC) and same is equally applicable to the present matter relating to the refund under section 11B as well as Finance Act, 1994. Para 16 of Hon'ble of Delhi High Court reads as follows:

> *"16. Mr.Gulati submitted that there can be no dispute with respect to the fact that an assessment as contemplated in taxing statues would also include a self-assessment. This, according to learned counsel, is a proposition which is no longer res intergra and stands authoritatively settled by the Supreme Court in ITC Ltd. vs. Commissioner of Central Excise Bombay MANU/SC/1284/2019:2019:INSC:1049: (2019) 17 SCC 46."*

5. Considered. We find that the decision in the matter BT (India) Pvt.Ltd. vs. Union of India and Ors decided on 06.11.2023 squarely applies to the facts of the present matter. Following the above decision, we are inclined to allow the appeal. Before parting, we would like to appreciate that learned authorized representative fairly conceded what

was against him and helped us to enable to do justice in ex-parte proceeding. This commitment of Authorized Representative both as an officer of the Court with keenness to learn as well as providing assistance to Court is commended.

6. Appeal is allowed.

(Order dictated in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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