IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 2.3.2017

Appeal No. ST/60637/2013-DB

(Arising out of Order-in-Original No. 143/GB/2013 dated 4.10.2013 passed by the Commissioner of Service Tax, New Delhi)

M/s Accent Overseas Pvt. Ltd. — Appellant

Vs.

CST, New Delhi — Respondent

Appearance

Shri A.K. Batra, C.A. - for the appellant

Shri Sanjay Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52199/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed by the appellant by the appellant against the Order-in-Original dated 4.10.2013.

2. The brief facts of the case are that during the period under consideration (1.4.2006 to 26.2.2010), the appellant was engaged in providing services of promotion of sales of products in India of the principals located outside India (China & Spain). The department has brought the said activity under the business auxiliary services and demanded the service tax under Section 65(105)(zzb) of the Finance Act, 1994. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri A.K. Batra, ld. Consultant for the appellant and Shri Sanjay Jain, ld. DR.

4. After hearing both the sides, it appears that the consideration was received in foreign currency for the export of services. The identical issue has come up before the Tribunal in the case of ***National Engineering and Industries Ltd. Vs. CCE, Jaipur*** - 2016 (42) STR 537 (Tri.-Del.), where it was observed that :-

> "**4.** We have considered the contentions of both sides. In case of the commission received from foreign supplier for procuring orders from the Indian buyers to whom the goods were directly supplied by the foreign supplier, the service rendered clearly satisfies the requirement of the same being the export of service as has been held by CESTAT in the case of *Paul Merchants* (supra). Even in the other situation where the commission is paid by the Indian buyers to the appellant as per arrangement with the foreign supplier instead of the commission along with price being first remitted to the foreign supplier and then the foreign supplier sending the commission to the appellant, in effect, the commission was paid to the appellant on behalf of the foreign supplier only and can be deemed to have been paid in foreign exchange as the buyers would have had to remit the commission part also to the foreign supplier who would have in turn sent it to the appellant. This arrangement thus makes the procedure simpler without any material difference with regard to foreign exchange implication to India. We find that in the case of *J.B. Boda* - 1997 (223) ITR 271 (SC) the Supreme Court has deemed such payments to be in foreign exchange. Thus we find that the issue is covered in the appellant's favour by the judgment of CESTAT in the case of *Paul Merchants* (supra) read with judgment of the Supreme Court in the case of *J.B. Boda* - 1997 (223) ITR 271 (SC). Accordingly, we do not find the impugned order to be sustainable. The appeal is allowed.

5. By following the ratio laid down by the Tribunal (supra), we find no reason to sustain the impugned order. The same is hereby set aside.

6. In the result, the appeal filed by the appellant is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)	(Justice Dr. Satish Chandra)
Member (Technical)	President

RM