CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 28.09. 2017

S.T. C.O. No.4082/2012 and
S. T. Appeal No. 2647 of 2012

(Arising out of order-in-appeal No. 123/ST/DLH/2012 dated 06.06.2012 passed by the Commissioner of Service tax, New Delhi).

CST, Delhi — Appellant

Vs.

M/s High Flyers Aviations Services — Respondent-assessee

Appearance:

Sh. Sanjay Jain, AR for the Revenue
Sh. R. K. Phillip, Advocate for the respondent -assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 55349/2017

Per: **B. Ravichandran**:

The Revenue is in appeal against order-in-appeal No. 123/ST/DLH/2012 dated 06.06.2012 of Commissioner (Appeals), Delhi-I.

2. The respondent-assessee is engaged, as representative of M/s Pan Am International Flight Academy, Miami, USA, in getting candidates for training programme offered by the foreign entity. The respondent-assessee acted in pursuance of an agreement dated 09.06.2005 entered into with Pan Am, USA. They have been collecting consideration from the prospective candidates for

whom the application and admission to the training programme is managed by the respondent-assessee. The dispute in the present case relates to service tax liability of the respondent-assessee for these consideration received from such candidates. Proceedings were initiated against the respondent-assessee resuling in the original order which dropped the demand. On appeal by Revenue, the same was confirmed by the Commissioner (Appeals) by the impugned order. Aggrieved by this, the Revenue is in appeal.

3. Ld. AR for the Revenue elaborating the grounds of appeal submitted that the lower authorities erred in two main issues:

(a) In quantification of tax liability by considering the consideration received under various headings by the respondent without supporting documents.

(b) Extending small scale exemption under Notification No. 6/2005-ST improperly to the respondent-assessee.

He submitted that the original authority allowed certain exclusion in the consideration for tax liability without proper examination of supporting documents and without proper categorisation and finding on the tax liability. On SSI exemption, ld. AR submitted that it is clear that the respondent-assessee provided service as the representative of M/s Pan Am International, a recognised pilot training Institute of USA. The students who approach the respondent are well aware of his brand of the Institute to which the registration and admission process is being managed by the respondent-assessee. As such, the service is linked to a branded activity and as such excluded from SSI exemption.

4. Ld. Counsel for the assessee contesting the appeal by the Revenue submitted that the lower authorities are correct in quantifying the tax. They have discharged service tax liability on registration fee paid by the candidates under Business Auxiliary Service. They are not liable to pay service tax on various other income like visa processing fee etc. He relied on Board Circular dated 20.04.2011 in this regard. He also submitted that there service to the individual candidates cannot be considered as branded service and as such they are eligible for SSI exemption. Further, he also relied on the Circular dated 19.09.2013 of the Board to state that services provided to the education institution are eligible for exemption under Notification No. 14/2004-ST dated 10.09.2004.

5. We have heard both sides and perused appeal records.

6. Admittedly, the respondent-assessee acted as a representative of M/s Pan Am in terms of the agreement dated 09.06.2005. We have also perused the agreement. It is very clear that the whole business of the respondent is based on the said agreement. The consideration received by the respondent from the different candidates and the mark up on such consideration is also discussed in the agreement. Hence, prima-facie, we are of the view that the appellant services are solely relatable to the agreement with M/s Pan Am, USA. Further, when the respondent is already discharging service tax under BAS for registration fee paid by the candidates, the liability on other consideration has to be looked into with supporting evidence for a clear finding. We are in agreement with the Revenue that the original authority has changed his stand

without supporting evidence recorded in the finding. We also find that the claim of the respondent-assessee that the services are with reference to education requires closure examination, as these are apparently not relating to any recognised education in India. Admittedly, these are vocational training. Whether the exemption is available for educational activity as claimed requires closer examination.

7. We find that the lower authority is required to reconsider the issue afresh in view of the terms of the agreement as discussed above and also points raised by Revenue in the present appeal. Accordingly, we set aside the impugned order and remand the matter to the original authority for a fresh decision. The respondent shall be provided adequate opportunity to present their case before such decision is taken.

8. The appeal is allowed by way of remand. C.O. also disposed of.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Pant