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

COURT NO. IV

DATE OF HEARING : 08/11/2017.
DATE OF DECISION : 22/11/2017.

Service Tax Appeals No. 1439-1440 of 2011

[Arising out of the Order-in-Appeal No. 249 & 250/S. Tax/D-II/2011 dated 07/07/2011 passed by The Commissioner (Appeals), Central Excise Delhi – II, New Delhi.]

M/s Jaypee Vasant Continental — Appellant

Versus

CST, Delhi – I — Respondent

Appearance

S/Shri S.K. Pahwa, Rahan Pahwa and Kuldeep Singh, Advocates – for the appellant.

S/Shri Sanjay Jain and Govind Dixit, Authorized Representative (DRs) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 58004-58005/2017 Dated : 22/11/2017

Per. B. Ravichandran :-

These two appeals are on identical dispute for different periods and are accordingly taken up together for disposal. The appellants are managing a hotel and are registered with service tax department under various categories. The dispute in the present appeals relates to their liability to service tax for their activities as a person engaged in Restricted Money Changing

(RMC). In terms of an agreement dated 15/06/2002 between the appellant and the Bank of Punjab Limited, the appellants were accepting foreign exchange from their customers. Such foreign exchange is accepted and passed on to the Bank of Punjab in terms of the said agreement. The appellants received certain amount as a consideration/commission for their activities. The Revenue proceeded against the appellant to hold that such consideration received from Bank of Punjab shall be liable to service tax under the category of Business Auxiliary Service in terms of Section 65 (19) of the Finance Act, 1994. The lower Authorities held that the appellants accepted foreign exchange on behalf of Bank of Punjab and transferred the foreign exchange to the said bank. The commission received for such activity is squarely covered by tax entry BAS as the appellants have promoted business of the bank.

2. The learned Counsel for the appellant contested the finding on the ground that they are not agents of Bank of Punjab. The agreement is a franchisee agreement. They cannot act as a partner or agent or party of joint venture in this arrangement. As such, the finding of the lower Authority that they are agents of the bank is not tenable. The demands were also contested on the question of limitation as the issue involved is one of interpretation. Accordingly, it was prayed that the demand even if it is held sustainable should be restricted to normal period with no penalties.

3. The learned AR contested the submissions of the appellants. He submitted that the term of contracts, more specifically Clauses II (2) to II (6) (9) (13), make it very clear that the appellants are acting on behalf of Bank of Punjab and are getting consideration for their services. They cannot be considered as broker in foreign exchange as they have no authority from RBI. They are only involved in RMC with restriction of only buying or accepting foreign exchange from their customers and passing it on to Bank of Punjab as per their arrangement. He further submitted that the foreign currency is nothing but goods as held by Hon'ble Supreme Court in **The Sales Tax Officer, Piliphit vs. M/s Budh Prakash Jai Prakash – 1954 APR 459** and CEGAT, Mumbai in **Thomas Cook (India) Ltd. vs. CC – 1994 (71) E.L.T. 724 (Tribunal)**. The appellants essentially acted as an agent and obtained commission for their activities. These are rightly taxed under BAS.

4. We have heard both the sides and perused the appeal record. It is clear that the appellant is not a regular foreign exchange broker. They do not have such licence. They are only involved in RMC in terms of Section 7 of Foreign Exchange Regulation Act, 1973. Their area of operation is restricted only to purchase of foreign exchange. The appellants are accepting/ purchasing foreign exchange in the course of their business of running hotel where the customers pay through foreign exchange. The Bank of Punjab's agreement with the appellant clearly stipulates the conditions and the scope of activities of the appellant. We find that a reading of the agreement makes it clear

that the appellant is engaged as an extended facility of Bank of Punjab though only for a limited purpose of accepting foreign exchange at the rate specified by the said bank. All the foreign exchange received by the appellant are to be transmitted without any change to the Bank of Punjab who will pay certain consideration for this service. We are of the considered opinion that this activity is nothing but promotion of business of Bank of Punjab and also acting as an extended representative of the bank for a limited purpose and getting commission for the same. We agree with the findings of the lower Authorities that the tax liability of the appellant is sustainable on this consideration.

5. The next point to be considered is the sustainability of demand for extended period and penalties imposed on the appellant. We note that he appellants acted in pursuance of an agreement in buying foreign exchange from the customers. We note that the title of the agreement stating the same as franchisee agreement and the nature of business in dealing with foreign exchange might have given a bonafide reason for the appellant regarding their non-liability to service tax for this activity. We note that in such circumstances, it is not tenable to invoke extended period with allegation of willful mis-statement, suppression etc. The impugned order justified the demand for extended period on the ground that the appellant is a public limited company with well qualified staff, with knowledge of taxation law. We find these reasons cannot justify the allegation of fraud or suppression in the facts and circumstances of the present case.

6. Accordingly, while upholding the tax liability of the appellant on merit, we note that such liability shall be sustainable only within the normal period of limitation in terms of Section 73. On the same reasoning, we hold the penalties are liable to be set aside. We order accordingly. The appeals are disposed of in these terms.

(Order pronounced in open court on 22/11/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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