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: 19/12/2017

Appeal No. ST/507/2011 - [DB]
[Arising out of Order-in-Original No. 443/ST/DLH/2010 dated 30/12/2010 passed by Commissioner of Central Excise (Appeals) Delhi]

Aeroflot Russian Airlines Appellant

Versus

CCE, Delhi Respondents

Appearance
Shri Manish Aggarwal & Puneet Aggarwal, Advocate for the appellant.
Shri Sanjay Jain, AR for the Respondent.

Appeal No. ST/53717/2015 - [DB]
[Arising out of Order-in-Appeal No. DEL-SVTAX-ADJ-COM-06-2015 dated 06/07/2015 passed by Commissioner, Central Excise, Haryana]

CCE, Delhi Appellant

Versus

Aeroflot Russian Airlines Respondents

Appearance
Shri Sanjay Jain, AR for the appellant.
Shri Manish Aggarwal & Puneet Aggarwal, Advocates for the Respondent.

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

Final Order No._58567-58568/2017__

Per. S.K. Mohanty :-

1. The issues involved in both these appeals are identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Inclusion of value of airport taxes/ passenger service fee, while calculating tax on "Transportation of Passengers embarking in India for International journey by Air Service" under Section 655(105)(zzzo) of the Finance Act, 1994 is the subject matter of present dispute.
3. The Ld. Advocate appearing for the appellant submits that the issue arising out of the present dispute regarding inclusion of value of the airport taxes and passenger service fee in the taxable value, is no longer res-integra, in view of the decision of this Tribunal in the case of American Airlines V/s CST [2016 (45) STR 226 (Tri.Del)].
4. On the other hand, the LD. DR appearing for the Revenue relied on the Final Order No. ST/A/412/2012-CUS dated 31/05/2012 passed by Tribunal in the case of British Airways PLC V/s CST, New Delhi to state that value of airport taxes and passenger service fee should be included in the taxable value for the purpose of computation of Service Tax liability.
5. Heard both sides.
6. We find that in the case of American Airlines (supra) relied on by the Advocate, the Tribunal has adequately dealt with the issue and concluded that passengers service fee and airport taxes collected from the passengers were deposited with the airport authority/ licensee and accordingly, the same should not be included in the taxable value for the purpose of computation of Service Tax liability. We also find that the decision relied upon by the Revenue in the case of British Airways PLC (supra) has also been dealt with by the Tribunal in the case of American Airlines (supra), holding as under:-

> *4. We have considered the contentions of both sides. The fact that the appellant has conceded that the service tax demand on fuel surcharge and indeed claimed to have paid the same with interest. We also note that the issues relating to passenger service fee and airport taxes was the subject matter of several judgments of CESTAT including Lufthansa*

German Airlines v. CST, New Delhi (supra) and Continental Airlines Inc. v. CST, Delhi (supra) wherein it has been held that no service tax is payable on these charges because these charges are not includible in the assessable value. Indeed CESTAT judgment in the case of British Airways PLC v. CST, New Delhi (supra) cited by Revenue was taken note of and distinguished by CESTAT judgment in the case of Lufthansa German Airlines v. CST, New Delhi (supra) by observing inter alia that the judgment in the case of British Airways PLC v. CST, New Delhi (Supra) had taken support of Rule 5 (1) of Service Tax (Determination of Value) Rules, 2006, which has been declared ultra vires by Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India [2012-TIOL-966-HC-DEL-ST=2013 (29) STR 9 (Del.).]

7. In view of the settled position of law that passenger service fee and airport taxes should not be included in the taxable value, we are of the considered opinion that the impugned order confirming the Service Tax demand should not stand for judicial scrutiny. Accordingly, after setting aside the impugned order, we allow the appeal filed by the assessee-appellant and dismiss the appeal filed by the Revenue.

8. Both the appeals are disposed of accordingly.

(Order dictated and pronounced in open court.)

(V. Padmanabhan)
Member (Technical)

S.K.Mohanty
Member (Judicial)

Rekha