IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

APPEAL NO. ST/86872/2018

(Arising out of order-in-appeal no. CD/TR(Appeal)/MC/43/2017-18 dated 20th February 2018 passed by the Commissioner of CGST & Central Excise, (Appeals), Thane Rural, Mumbai.)

M/s Import Express India P Ltd. Appellant

Vs.

Commissioner of CGST, Mumbai Central Respondent

Appearance:

Shri Rajiv Luthia, Chartered Accountant for Appellant
Shri O M Shivdikar, Assistant Commissioner (AR) for Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 04.10.2018
Date of Decision: 10.10.2018

ORDER NO. A/87580/2018

Per: Ajay Sharma

The instant appeal has been filed from the Order-in-Appeal No. CD/TR(Appeal)/MC/43/2017-18 dated 20th February 2018.

2. The appellant herein is 100% subsidiary of SHOP YOUR WORLD PTE LTD, SINGAPORE (hereinafter referred as "Parent Company"). The Parent Company sells their products to their customers in India. A Service

Agreement dated 18th August 2010 was entered into between the Appellant and its Parent Company. The Appellants are providing various services categorised under "Business Auxiliary Services" to their Parent Company, such as collecting of payments from their customers on behalf of the Parent Company, co-coordinating with Courier Company, customer support service etc. and for the said services they are being paid service charges in the form of commission by their Parent Company as per Clause 4 of the service agreement. The said Clause 4 of the service agreement is extracted as under:

> *"Clause 4. Compensation for Services*
>
> *The Company shall pay to Import Express compensation for the services as follows:*
>
> *The service provided in Annexure 'A' shall be the cost incurred by Import Express for providing these services plus 4%*
>
> *Import Express shall invoice the Company on a monthly basis. All such payments shall be made by the Company within 7 days from the date of the receipt of such invoice. The amount owed for services rendered by Import Express on behalf of the company may be netted off against the receivables of the company collected by Import Express on behalf of the company."*

3. Although the customers made online payment to the Parent Company for the products purchased by them but many times they made payment for the Parent Company's products to the Appellant in India and the appellant in turn after deducting their service charge/commission in term of Clause 4 of the Service Agreement, transfer the remaining amount to the Parent Company at Singapore through banking channel. In other words, the Appellant remits the net charge to the Parent Company after deducting its service charges/commission. For the period from July, 2011 to September,

2011 the Appellant had filed refund claim of ₹5,09,803/- under the Export of Service Rules, 2005 for rebate of Service Tax paid on export of services. The same was rejected by the Adjudicating Authority vide Order-in-Original dated 19th January 2016. On appeal, the Learned Commissioner GST & Central Excise, Thane (Rural), Mumbai vide the impugned order dated 20th February 2018, also dismissed the same.

4. I have heard Learned Chartered Accountant for the Appellant and Learned Authorised Representative for the Revenue and perused the record. According to the Learned Chartered Accountant, the appellant recovered consideration of sale of goods from local customers of the Parent Company and thereafter remits the net consideration to its Parent Company after deducting their service charges. He further submitted that had the entire amount received from the customer of Parent Company been remitted to Parent Company, the service charges due to Appellants in foreign exchange would have been paid by Parent Company from abroad. But instead of going by this lengthy process the Appellant paid only the net consideration in foreign exchange to the Parent Company and therefore in a way the Appellant has saved the foreign exchange. In other words, it is deemed that the Appellant has received entire consideration for their service charges in convertible foreign exchange as required by the Export of Service Rule, 2005. He also relied upon the decision of the Tribunal (Principal Bench, Delhi) in the matter of *National Engineering Industries Ltd. Vs. CCE, Jaipur (2008) TIOL 939* wherein this Tribunal has held that receipt of consideration received in Indian Rupees in lieu of foreign exchange is eligible for benefit of exemption under Export of Service Rules, 2005. The above mentioned decision has

also been followed by this Tribunal in the matter of *Pam Pharma & Allied Machinery Co. Pvt. Ltd. Vs. CST, Mumbai – (2015) (7) TMI 755* in which this Tribunal while holding that the Appellant has complied with conditions of Export of Services Rules, 2005, granted refund to the appellant. He also relied upon the decision of Chennai Bench of this Tribunal of in the matter of *Arafaath Travels Pvt. Ltd. Vs. CST, Chennai* reported in *2017 (7) GSTL 437 (Tri.-Chennai)* in which it has been held that procedure of retaining the serviced charge/commission amount and only remitting the remaining portion of the proceeds will have to be necessarily treated as saving of foreign exchange and by implication is akin to receipt of monies in convertible foreign exchange. The service rendered by the Appellant to the foreign recipient will be nothing but export of "Business Auxiliary Services" which are exempted from liability to service tax.

5. The Learned Authorised Representative on behalf of the Revenue reiterates the finding in the impugned order and submitted that the appeal filed by the Appellant deserves to be dismissed.

6. According to me, since out of the total payment to be made by the Appellant in India to its Parent Company at Singapore, the same was reduced to the extent of his service charges/commission and the remaining amount was remitted to the foreign Parent Company in foreign exchange, and since such Indian Rupees was obtained in lieu of foreign exchange, therefore the same will be deemed to be convertible exchange. The Hon'ble Supreme Court in the matter of *J. B. Boda & Co. Pvt. Ltd. Vs. CBDT reported in 2002-TIOL-2578-SC-IT* while interpreting convertible foreign exchange under the

provisions of Income Tax Act has laid down that brokerage income retained by the assessee acting as agent of foreign reinsurer, out of the premium collected from the ceding insurance company in India and remitting the balance to the foreign insurer in foreign exchange, can be said to be the income in convertible foreign exchange and hence qualify for deduction under section 80-O of the Income Tax Act.

7. Rule 3[2] of Export of Service Rule, 2005 for the non-compliance of which, the Appellant's claim has been rejected by the authorities below is stated as under:-

> *"**Rule 3(2) of "Export of Services" Rule, 2005***
> *"(2) the provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied namely:-*
> *(a) (****)*
> *(b) Payment for such service is received by the service provider in convertible foreign exchange."*

8. Although Rule 3(2) requires the payments to be received by the service provider i.e. the Appellant herein, in convertible foreign exchange, but in view of the decision mentioned above and in particular the decision of the Hon'ble Supreme Court in the matter of *J. B. Boda & Co. Pvt. Ltd. (supra)* and the decision of the Tribunal in the matter of *National Engineering Industries Ltd. (supra)* and *Arafaath Travels Pvt. Ltd. (supra)*, even the procedure of retaining the service charge/commission amount and only remitting the remaining portion of the proceeds in foreign exchange will have to be necessarily treated as saving of foreign exchange and by implication is akin to receipt of monies in convertible foreign exchange. It is nothing but saving of foreign exchange as the Appellant has retained that portion and not sent

the same in foreign exchange to the Parent Company at Singapore along with other said proceeds. Outflow of foreign exchange has been reduced to the extent of commission/service charge retained by the Appellant within India. Such retention has to be necessarily treated as saving of foreign exchange. Therefore the appellant is entitled for refund and as a result, the appeal filed by the appellant is allowed.

(Pronounced in Court on 10.10.2018)

(Ajay Sharma)
Member (Judicial)

Prasad