$~51 & 52

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7768/2003**

OMAN AIR ..... Petitioner

versus

UOI & ORS. ..... Respondents

\+ **W.P.(C) 1220/2005, C.M. APPL.911/2005**

OMAN AIR ..... Petitioner

versus

UOI & ORS. ..... Respondents

Through : Sh. Vineet Singh, Ms. Manju Bhagat and Ms. Krishna Jain, Advocates, for petitioners.

Sh. Ruchir Mishra, Advocate, for UOI, in Item No.51.

Sh. Amit Bansal with Sh. Akhil Kulshrestha, Advocates, for Respondent Nos. 2 and 3, in Item Nos. 51 and 52.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **19.12.2016**

The petitioner, an international air carrier is aggrieved by the order of penalty issued by the respondents under Section 38(3) of the *Finance Act*, 1979, occasioned by the delay in the deposit of the requisite amount mandated by law.

The provisions of the Finance Act, read from time to time, and the *Foreign Travel Tax Rules, 1979* ("FTT") required airlines/air carriers to deposit as a condition for permitting passengers to embark the aircraft, stipulated amounts. In this case, the petitioner concededly deposited these amounts late. Its explanation for such late deposit is again not disputed and appears to be genuine on account of its administrative set up which required clearance from its head office at Muscat, for payments beyond certain limit. The approval could not be obtained in time because the last date was on a Friday when establishments and offices do not function in Muscat. As a result, there was a two day delay in the deposit of FTT. The revenue urges that regardless of the reason for the delay, Section 38(3) mandates, without exception, deposit of an amount equivalent to 20% of the tax amount due. It relies upon a previous Division Bench ruling in *Singapore Airlines Ltd. v. UOI* 2004 (175) ELT 89, where too the delay occasioned was two days, like in the present instance. In *Singapore Airlines (supra)*, this Court had negatived the condition of *mens rea* as a prerequisite for imposition of penalty under Section 38(3) and held that that places an absolute liability upon the air carrier. The observations are as follows:

> *"8. A bare reading of Section 38(3) read with Rule 4 makes it clear that liability to pay the FTT collected to the credit of the Central Government within the stipulated time is an absolute liability. It does not depend on the wrongful intent or blameworthy condition of mind, the concept of mens rea, sought to be read into the said provision by learned counsel for the petitioner, when it is pleaded that there was no deliberate defiance of the statutory provisions.*
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> *XXXXXX XXXXXX XXXXXX*
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> *11. We feel that these observations are apposite for construing the aforenoted provisions of the Act. In our view, a default under Section 35(2) of the Act falls under the first exception carved out in the aforenoted*

paragraph in Ganesh Das Bhojraj's case (supra). Bearing in mind the fact that the carrier collects the FTT from the passengers as an agent of the Government of India and it cannot retain the sum so collected with itself for a period longer than what is permitted, we have no hesitation in holding that the liability to deposit the FTT collected to the credit of the Central Government is an absolute liability. The carrier is duty bound to deposit the FTT in the account of the Central Government strictly by the stipulated time, namely, before the expiry of 30 days from the end of the month in which it is collected. We, therefore, do not find any substance in the contention of learned counsel for the petitioner that since the alleged delay in depositing the said amount was not on account of any contumacious conduct of the petitioner, penalty under Section 38(3) of the Act was not eligible."

In view of the above decision, which applies to the facts of the present case which are closely similar, if not entirely identical, we are of the opinion that no relief can be granted.

The writ petitions are accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 19, 2016
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