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

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Judgement delivered on:03.02.2017

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WP(C) 6611/2001

M/S. SPICEJET LTD.

..... Petitioner

Through: Mr. Atul Sharma, Adv.

Versus

UOI & ORS.

..... Respondents

Through: Mr. Sanjeev Narula and Sh.
Abhishek Ghai, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (OPEN COURT):-

1. This petition impugns the order of the Government of India dated 30.04.2001 which upheld the Order-in-Appeal dated 25.08.2000 passed by the Commissioner of Customs (Appeals), New Delhi. The Order-in-Original dated 30.04.2001 passed by the Commissioner of Customs, New Delhi had imposed a demand of Rs.8,65,06,850/- being Inland Air Travel Tax (IATT) for the period from March, 1996 to August, 1996 along with interest @ 20% in terms of Section 43A(1) of the Finance Act, 1989 ('the Act') read with Notification No. 4/94-IATT dated 12.08.1994. A penalty amount of Rs 25 crores too was imposed on the petitioner under Section 46(3) of the Act. However, this was reduced to Rs 10 crores by the Order-in-Appeal.

2. Section 42 of the Act imposed a compulsory 'Inland Air Travel Tax'

upon every carrier obliging it to collect tax on every inland journey from the passenger @ 10% of the fare. The carrier has to credit the amount to the Central Government failing which an interest on the amount of tax not paid for the delayed period is payable at the rate not below 20% and not exceeding 30%. Admittedly, the petitioner/carrier under the Act, did not pay the amount although it had collected it from its passengers. Therefore, the minimum rate of 20% was imposed on the unpaid amount. In default of payment of the demanded amount the aircraft which was then leased to the petitioner from M/s Air U.K. Leasing Limited (Lessor) had been distrained. It was later released and de-registered upon the lessor depositing a sum of Rs.12.5 crores under the order of this Court in WP(C) 110/1997 which had been filed by the Lessor. Subsequently, by Writ Petition (C) No. 1908/1997, the Lessor sought refund of the said amounts of Rs.12.5 crores contending that it was not liable to pay the said amount towards the IATT dues. That writ petition was disposed off on 18.01.1999 in view of the order passed by the Assistant Commissioner of Customs on 13.01.1999 holding that the aforesaid amount of Rs. 8,65,06,850/- along with interest @ 20% and penalty amount of Rs.25 crores was payable.

3. Aggrieved by the aforesaid Order-in-Original dated 13.01.1999, the petitioner preferred an appeal wherein the Commissioner of Customs (Appeals) confirmed the aforesaid demand. However, the penalty amount was reduced to Rs.10 crores. It reasoned as under:

“On the basis of observations and findings recorded hereinabove, I have to infer that the pleadings of the appellants, that the amount of Rs.12.5 crore, deposited by the lessor for the release of the distrained aircraft, has been appropriated by the department against the determined dues payable by the appellants, or that it has

been already adjusted against the determined liability of the appellants, have no basis. In spite of a clear observation made by the Assistant Commissioner in the impugned order that the appellants had not produced any letter from the lessor or any TR6 Challan to prove that the amount of Rs.12.5 crore was deposited against the liability of the appellants, no such requisite evidence has been produced even before me. With a view to the foregoing, I hold that the dues, determined in the impugned order on account of IATT and interest thereon, are still unpaid and the appellants have been withholding that payment in gross violation of and utter disregard to the law; and therefore, the order of the Assistant Commissioner in question, directing the appellants to deposit the same immediately, suffers from no infirmity. I fail to find any substance in all other pleas relating to this aspect for the findings recorded above.

*One of their contentions mentioned in the appeal memorandum is that rule 8A of IATT Rules, 1989 does not provide for any penalty for the breach of rule 6 *ibid*. As the penalty in the impugned order has been adjudged in terms of provisions of Section 46 of the Act, I fail to find any relevance of this pleading.*

After examining the provisions of Section 46 of the Act, I find that in such cases of non-payment of IATT within the stipulated time, a penalty, which is not to be less than one fifth and which can extend upto three times of the unpaid amount of the IATT, can be imposed. Such cases, where the concerned persons act in utter disregard to the law, call for the imposition of a higher penalty. But in this case the penalty imposed is very close to the upper limit; and therefore has acquired a dimension which wounds unrealistic when seen in the light of persisting practice. I, therefore, hold that to meet the ends of justice, a modification in the impugned order to reduce the amount of penalty is necessary. I accordingly reduce the amount of penalty from Rs.25 crore to Rs.10 crore (Rupees Ten Crore only) and modify the impugned order to this extent.”

4. The Commissioner (Appeals) was also of the view that the amount of Rs.12.5 crore lying deposited against the distrained aircraft in terms of Section 46A of the Act could not be deemed to have been recovered against the amounts payable by the carrier because it was the carrier's specific liability which had to be discharged by it. The Commissioner (Appeals) reasoned as under:

"Thus, the facts, placed before me, clearly evince that the amount of Rs.12.5 crore is lying deposited and represents the distrained aircraft in term of Section 46A ibid. The appellants have however, contended that the amount stands appropriated and in support of this, have referred to the department's letter dated 15.4.97. Citing the contents of that letter, the appellants have themselves mentioned, in their write-up submitted on 11.8.2000, that the Addl. Commissioner, vide the letter dated 15.04.1997, addressed to the DGCA, wrote that the amount is merely a deposit for the release of the aircraft which can be appropriated towards the outstanding dues if the petition is ultimately dismissed. I thus find that the letter in question, as it uses the words "can be" expresses only a probability about the appropriation of the amount. It no where says that the amount deposited by the lessor "has been" or "shall definitely be" appropriated towards dues adjudged against the appellants. The plea, thus, I hold, is devoid of substance. In any case, the order of the Hon'ble High Court passed on 18.01.99 in CW 1908/97, whereby the U.O.I. and the Commissioner have been directed to proceed for the recovery of the dues from the appellants, has to prevail. Order dated 18.01.99 read as following:

"It is not disputed now that during pendency of the writ petition and pursuant to the order passed by this Court, Assistant Commissioner of Customs (IATT) has on 10.1.1999 passed an order determining the tax liability of respondent No.5 for payment of

inland air travel tax. In view of the fact that now liability has been determined, no other or further order deserves to be issued in this petition except that respondents Nos. 1 to 3 will act in accordance with law to recover the amount subject to course of rights of respondent No.5 to challenges the said order in appeal or otherwise in accordance with law. Ordered accordingly. The petition stands disposed of.””

5. Aggrieved by the aforesaid order, the appellant filed a revision application which was disposed off by the impugned order holding untenable the petitioner's plea that since the IATT dues were paid by M/s.Air U.K. Leasing Ltd., the Lessor, the same could not be demand twice. The order further held that the amount deposited was only for the release of the distrained aircraft upon the directions of this Court for deposit of the said amount which were dues from the carrier (present petitioner), till the matter attains finality in the Letters Patent Appeal (LPA) pending before this Court. And before the adjudication in the LPA it could not be conclusively said that the said amounts stood adjusted against the IATT dues from the carrier. It was further held as under:

“The respondent having failed to honour their commitments, cannot hide their inefficiency or incompetence (as revealed from their letter dt 21.12.98 (vis-a-vis Lufthansa) in reply to the 6 SCNs) and claim the deposits made by another as their own payments. The lessor are not a party to the instant proceedings. What they have paid was in accordance to the Court orders and cannot be appropriated towards the dues of the respondents, even though on the date of deposit the sums more or less equalled the dues. The deposits made by the lessor are different from the dues payable by the

respondents. Had it not been so, the lessor, namely, M/s Air U.K. Leasing Ltd would not have sought orders from the Court for return of those sums. Therefore the respondents plea enumerated vide para 10.3 to 10.6 supra are not sustainable and are rejected.”

6. The learned counsel for the petitioner has reiterated arguments similar to what was advanced by it all along in the authorities below. In addition, the learned counsel for the petitioner has stressed that M/s. Air U.K. Leasing Ltd deposited the amount of Rs.12.5 crores although under the directions of this Court, in two transactions, i.e. Rs.8 crores was paid by draft in the name of the Commissioner of Customs, Air Cargo Unit, New Delhi and Rs.4.5 crores was in the form of a Fixed Deposit made on 10.4.96 which matured on 11.4.98, and has since been credited to the Central Government as duty payment, by TR 6 Challan dated 23.8.98. This has been deposited under Major Head “0045”, which relates to “Other taxes and duties on commodities and services”. The Challan also mentions that the deposit is against the outstanding dues of the appellant towards IATT in terms of the orders dated 10.4.98 and 10.2.98 of this Court in CW 110/97.

7. The learned counsel contended that: (a) requisite amounts towards dues as outstanding were already been paid to the Government and the same stood appropriated under the proper account; hence there was no further requirement of payment to be made by the petitioner; (b) the amount of Rs.12.5 crore although deposited by the Lessor, was a permissible mode of recovery of IATT dues as contemplated under Section 46A(4) of the Act read with Rule 14(4) of the eponymous Rules and (c) having recovered the said amount by the aforesaid permissible method, it was not open to the Revenue to initiate recovery of the said amount from the petitioner all over

again. Reliance was made upon the judgment of the Supreme Court in *Purshottamdas Thakurdas v. CIT* (1963) 48 ITR 206 to contend that once tax has been deducted by a mode of deduction under the statute, no other mode of collection of the tax can be legally resorted to. The petitioner has also cited several financial constraints which has led to the non deposit of the IATT dues.

8. Having considered the facts and circumstances of the case, the Court is of the view that Section 42 of the Act fixes the tax liability on the carrier and while Section 43A imposes the interest between 20% and 30% for the delay in payment of the amount, the modes of recovery of unpaid amount is prescribed under Section 46A(4) of the Act. Section 46A (1) and 46A(4) read as under:

“46-A(1) – Where the inland air travel tax or interest or penalty is not paid by a carrier or other person, as required under the provisions of sub-section (2) of section 42, Section 43-A or Section 46, the authority specified in the rules (hereinafter referred to as the authority) may, after the tax, interest or penalty has been determined under the rules, proceed to recover the amount of such tax, interest or penalty by one or more of the modes specified in sub-section (2), sub-section (3) or sub-section (4).

46-A(4) – The authority may distrain or arrest any aircraft and any other property belonging to, or under the control of, the carrier or other person, as the case may be, and detain the same until the tax, interest or penalty so determined is paid; and in case any part of the tax, interest or penalty or of the cost of the distress or arrest or of the keeping of the aircraft or other property distrained or arrested, remains unpaid for the space of thirty days next after any such distress or arrest, may cause the said aircraft or other property to be sold and with the proceeds of such sale may satisfy the tax, interest or penalty and the costs including the cost of sale remaining unpaid, and

shall render the surplus, if any, to the carrier or other person.”

9. Under the statutory scheme, therefore, the aircraft which was in possession of the carrier was first distrained and then released to the Lessor upon the deposit of an amount near equivalent of the dues then outstanding. Therefore, the deposit would represent only the aircraft and not such amounts as were to be recovered from the carrier. The Lessor was, obviously interested in release of the aircraft which had far greater value than the amount required to be paid for its release and de-registration from the authorities. Subsequently, the lessor had also sought refund of the said amount from the Government. However, the responsibility of the carrier to pay the IATT dues subsisted. The recovery is to be made from the carrier until tax, interest, penalty so determined is paid. The distraintment was only for the purpose of ensuring recovery of the monies then due. The monies deposited by a third party could not be deemed to have been adjusted against the aforesaid dues of the tax as well as the penalty. Financial constraints of the carrier do not constitute a valid reason for either waiver of any dues under Section 42 and 43-A of the Act or under Section 46 of the Act.

10. Furthermore, there is no letter or due communication from the Lessor agreeing to adjustment of the amounts paid by it against the carrier's tax dues. Indeed, the position is to the contrary as refund of the said amounts had been sought by the carrier. Hence, the contentions of the petitioner are untenable.

11. The rationale for reducing the penalty amount from Rs.25 crores to Rs.10 crore is sound and there is no ground to interfere with it. The

deliberate withholding of monies (taxes) by the petitioner from such statutorily sanctioned collections and diversion of it by the carrier for its own private use, instead of crediting it into Government's account was in blatant disregard to statutory provisions. This omission – in depositing the collections was illegal and dishonest. Accordingly, the non-imposition of penalty in such case would dilute and indeed render ineffective the deterrence envisaged under Section 46 of the Act. The reduction of the penalty amount from the maximum to a third was justified. The Court is satisfied that the discretion exercised by the appellate authority was sound and judicious and has not, in turn inflicted a disproportionate burden, in the overall circumstances of the case.

12. In view of the preceding discussion the petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

S. RAVINDRA BHAT, J.

FEBRUARY 03, 2017/acm