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

\+ SERTA 11/2024

COMMISSIONER CGST DELHI SOUTH COMMISSIONERATE .....Appellant

Through: Mr. Akshay Amritanshu, SSC with Mr. Samyak Jain, Ms. Drishti Saraf & Ms. Pragya Upadhyay, Advs.

versus

JAPAN AIRLINES INTERNATIONAL CO LTD .....Respondent

Through: Mr. Yogender Aldak and Mr. Kunal Kapoor, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **17.09.2024**

1. The present appeal has been preferred positing the following questions of law for our consideration:

> "a. Whether the Respondent is liable to pay service tax for tickets booked from outside India in respect of 'Travel by Air Service' for journey starting from India with effect from 01.05.2006?
>
> b. Whether the demand raised vide Show Cause Notice dated 21.10.2015 has been computed correctly in INR?"

2. Having heard learned counsel for the parties and on going through the order of Central Excise and Service Tax Appeal Tribunal [**"CESTAT"**] which stands impugned before us, we find that insofar as the taxability of the receipts received by the respondent is concerned, those were stated to have been remitted directly to its foreign offices. The said issue has been remitted for consideration

afresh to the Adjudicating Authority. Accordingly, we are not required to examine the question of taxability at this stage.

3. The only question which therefore survives is with respect to the exchange rate which was applicable for the period between February 2010 to January 2015. We notice that the CESTAT has while dealing with this aspect observed as follows:-

> "21. The show cause notice accepted the statement made in the calculation sheet regarding the figures and the only dispute was as to whether the amount of 13,93,06,059/- was in JPY or Rupees. The Commissioner does not doubt that this amount was in JPY and indeed he could not have in view of categorical statement in the calculation sheet that the amount was in JPY. The Commissioner however, went on to record findings on issues which were not even the subject matter of the show cause notice. The appellant was not required to explain as to how the said figures were in JPY, nor was the conversion rate in dispute."

It thus appears to have proceeded on the premise that the exchange rate of 1.86 did not form subject matter of contestation.

4. However that may not be correct when viewed in light of paragraph 35.3 of the Order in Original dated 12 January 2018 and which is extracted hereinbelow:-

> "35.3 The Noticee also contested that they had provided the figures in Japanese Yen (JPY) with reference to their correspondence made with the Department. At the outset, I find that the worksheet provided itself indicates that the amounts are categorized under heading "*JN Tax* they had provided taxable services and collected value of such services along with Service Tax on such values. It is also admitted that the tickets must have been booked from various destinations outside India thus involving various foreign exchange currency and therefore, it is not the case that they had collected such values and taxes in only JPY. <u>Moreover, there is nothing on record about the specific rate of foreign exchange currency as applicable during the disputed period and the rate of Service Tax as applicable over the period. Hence, by merely giving the consolidated figures for the entire period i.e. from February, 2010 till January, 2015 and computing the figures by dividing the same by 1.86 collectively and uniformly does not substantiate their claim to have collected, computed and collated</u>

the figures in JPY, especially, in the above said circumstances. Moreover, it is also not the case that the said figures have not been specified in the Balance Sheet of the Noticee Company in the appropriate currency. Hence, I am constrained to accept the version of the allegations in the Show Cause Notice, especially, in the absence of proper explanation by the Noticee as to how they arrived at the said figures in JPY, inspite of being given a chance to explain their stand no explanation is forthcoming so the onus to prove their innocence has not been discharged."

5. As is apparent from the aforesaid, the Adjudicating Authority had found that the respondent had failed to place on the record any material which may have established that the exchange rate of 1.86 remained constant or unchanged during the period in question.

6. In view of the aforesaid and since the principal question itself has been remitted for further consideration of the Adjudicating Authority, the ends of justice would warrant this aspect too being remitted for consideration, dependent upon the outcome of taxability.

7. We accordingly allow the instant appeal and set aside the order of the CESTAT insofar as it affirms the computation of the liability based on the exchange rate of 1.86. The aforesaid aspect shall also be examined by the Adjudicating Authority before which the matter stands placed pursuant to the impugned order. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 17, 2024
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