

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 54117 of 2014

(Arising out of Order-in-Original No. 17-18/AKJ/CST/2014 dated 30.05.2014 passed by the Commissioner of Central Excise, New Delhi)

DATE OF HEARING : 03.04.2018

DATE OF DECISION : 03.04.2018

M/s China Eastern Airlines Appellants

(Rep. by Sh. Sanjeev Jain, CA)

VERSUS

CST, New Delhi Respondent

(Rep by Sh. R.K. Manjhi, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT

HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51290/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 17-18/AKJ/CST/2014 dated 30.05.2014 passed by the Commissioner of Central Excise, New Delhi. The period in dispute is October, 2010 to June, 2012.

2. The brief facts of the case are that, the assessee- Appellants are providing services of „Transport of Passengers by Air“and „Transport of Goods by Air“. The dispute in the present appeal is relating to their liability to pay Service Tax on “Passenger Service Fees (PSF) and other taxes (international taxes) collected by the airlines as part of consideration when the tickets are issued to the passengers”. The Department has demanded the Service Tax. Being aggrieved, the assessee- Appellants have filed the present appeal.

3. With this background, we have heard Sh. Sanjeev Jain, learned Chartered Accountant for the assessee-Appellants and Sh. R.K. Manjhi, learned DR for the Revenue.

4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up for consideration before the Tribunal in the case of **M/s Royal Jordanian Airlines & Ors. Vs CST, Delhi**, Final Order No. 57798-57803/2017 dated 10.11.2017, wherein assessee- Appellants is one of the parties, and the Tribunal after considering the number of case laws has followed the ratio laid down in the case of **Lufthansa German Airlines vs CCE&ST, Delhi (Gurgaon)**, observed that :

“We find that Airport Tax has been collected by the appellant as per Section 22 of Airport Authority of India Act, 1994 which empowers the authority to charge fees for the amenities given to the passengers and visitors at any Airport. Further, the PSF has been charged in terms of Aircraft Rules, 1937, wherein Rule 88 of the said Rules, authorize the licensee to collect fees to be called as Passenger Service Fee from the embarking passengers at such rates as the Central

Government may specify, and is also liable to pay for security component to any Security Agency designated by the Central Government for providing the security service. We find that the said tax has been collected by the appellant and same has been shown separately on the tickets. Therefore, the appellant has complied with the condition of Rule 6 of Service Tax (Determination of Value) Rules, 2006 and the same are not includable in the assessable value of service provided by the appellant, as the impugned period is, post 27/02/2010 and the said issue has been examined by this Tribunal in the appellant's own case wherein this Tribunal has made it clear that these charges are not to be included in the assessable value of the services provided by the appellant relying on the decision in the case of Continental Airlines vs. CST, New Delhi (supra). Moreover, as per the exemption Notification No. 12/2010 dated 12/02/2010, statutory taxes charged by any government on Air passengers would be excluded from the taxable value for the purpose of levy of tax and therefore, the service tax is not payable by the appellant".

5. By following our earlier order (supra), we set aside the impugned order and allow the appeal.

6. In the result, the appeal filed by the assessee- Appellants is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)

PRESIDENT

(V. PADMANABHAN)

MEMBER (TECHNICAL)