

A P.C. PAULOSE, M/S. SPARKWAY ENTERPRISES
v.
COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
(Civil Appeal No. 483 of 2011)

B JANUARY 13, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

C *Finance Act, 1994 – s.65 – Clause 105 (zzm) and 3d –*
Licence granted by Airport Authority of India(AAI) to appellant
for collecting airport admission ticket charges on behalf of AAI
for which the appellant was required to pay monthly licence
fees – Liability of the appellant to pay service tax – Held:
D *Though the appellant deposited monthly licence fees to AAI*
but it collected the required fees from the users of the facility
and provided all facilities to such customers – Appellant
being a person authorized by AAI to provide service in
express terms and conditions, it became liable to pay tax as
E *it was an authorized person to provide taxable service and*
collect the admission ticket charges on contract basis – The
appellant stepped into the shoes of AAI for the service
provided on the basis of the authorization and became liable
to pay tax in terms of the operation of s.65, Clause 105 (zzm)
– Service Tax.

F *Words and Phrases – ‘Airport authority’ and ‘taxable*
service’ – Meaning of – Finance Act, 1994 – s.65, Clauses
(3d) and 105(zzm) – Airports Authority of India Act, 1994 –
s.3.

G **The Airport Authority of India (AAI) entered into a**
licence agreement with the appellant by which the
appellant was entrusted with the responsibility and the
activity of collecting airport admission ticket charges on
behalf of AAI Limited at Karipur Airport, Calicut. The

appellant was permitted to collect Rs. 50/- per visitor as airport admission ticket charges for which the appellant was required to pay an amount of Rs. 2,66,797/- per month as licence fee. The appellant collected the admission ticket charges for the period from 10.09.2004 to 31.03.2005.

The Central Board of Excise and Customs issued circular No. 80/10/2004 ST dated 17.09.2004 in regard to service tax on airport services stating that services provided in an airport or civil enclave to any person by AAI or by a person authorized by it or any other person having charge of management of an Airport are taxable under the aforesaid category. On the satisfaction that the appellant was required to pay service tax on airport services rendered by it as 'authorized person' of AAI at Karipur Airport, Calicut for the period from 10.09.2004 to 31.03.2005 a show cause notice was issued to the appellant demanding service tax and education cess. There was also a proposal to demand interest under Section 75 of the Finance Act, 1994 on the above service tax and education cess as well as penalty under Section 76 of the Finance Act, 1994. The appellant submitted reply pursuant to which the adjudicating authority confirmed the demand of service tax and education cess with interest under Section 75 of the Finance Act, 1994. Aggrieved, the appellant filed appeal before the Commissioner of Central Excise & Customs (Appeals) which was, however, dismissed. The appellant filed second appeal before the Customs Excise & Service Tax Appellate Tribunal [CESTAT]. The Tribunal allowed the appeal holding that the appellant was only a collecting agent and therefore the liability to pay the service tax rested on AAI which was the actual service provider. Aggrieved, the department filed appeal before the High Court. By the impugned judgment, the High Court allowed the appeal with a direction to the original

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A authority to verify whether AAI had paid service tax on the admission tickets during the relevant period and, if in case, AAI had paid the said service tax, the appellant would stand exonerated from the liability; otherwise, service tax would be recovered from the appellant as per the provisions of the Act.

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The question which arose for consideration in the instant appeal was whether the appellant-licencee could be held liable for payment of service tax.

C Dismissing the appeal, the Court

D HELD:1. The licence agreement clearly stipulates that Airport Authority of India (AAI) is entitled in law to grant licence at its Calicut Airport for the purpose of airport admission so as to provide amenities and facilities to passengers and visitors at the Airport and that the licensee, i.e., appellant, has agreed under the licence agreement to render such services to AAI on the terms and conditions mentioned in the said licence agreement.

E One of such stipulations was that the licensee would pay all rates, assessment, out goings and other taxes as leviable on the licensee in law. [Para 13] [881-C-D]

F 2. Another responsibility that vested on the licensee was to maintain regular and proper account books along with other supporting documents regarding sales effected by the licensee in the said premises which could be inspected by AAI in such manner as may be prescribed. The licensee was also responsible under the licence agreement to operate the subject facility by charging the rate from users, as may be approved in advance by AAI. [Para 14] [881-E]

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3. Albeit, it is true that the appellant deposits a licence fees of Rs. 2,66,797/- per month to AAI but it collects the

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required fees from the users of the facility and provide all facilities to such customers. As per Clause 105 (zzm) of Section 65 of Finance Act, 1994 '*taxable service*' means any service provided to any person, by Airport Authority or any person authorized by it, in an Airport or a Civil Enclave. As per Clause (3d) of Section 65 of the Finance Act, 1994 '*Airport Authority*' means AAI constituted under Section 3 of the Airports Authority of India Act, 1994 and also includes any person having charge of management of an airport or a civil enclave. It is thus crystal clear that the appellant being a person authorized by AAI to provide service in express terms and conditions, it becomes liable to pay such tax as it was an authorized person to provide taxable service and collect the admission ticket charges on a contract basis. [Paras 6, 15] [881-F-H; 879-C]

4. Under the terms and conditions of the agreement, the appellant is authorized to provide all the services as mentioned therein and, therefore, as per the statutory definition the appellant steps into the shoes of AAI for the service provided on the basis of the authorization and becomes liable to pay such taxes in terms of the operation of Section 65 Clause 105 (zzm) of the Finance Act, 1994. [Para 16] [882-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 483 of 2011.

From the Judgment & Order dated 9.7.2009 of the High Court of Kerala at Ernakulam in CE Appeal No. 28 of 2008.

Raghenth Basant, Liz Mathew for the Appellant.

P.P. Malhotra, ASG, Harish Chandra, Aruna Gupta, B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

A **Dr. MUKUNDAKAM SHARMA, J. 1. Leave granted.**

B 2. The issue that falls for consideration in this appeal is whether the appellant, who is a licensee, could be held liable for payment of service tax when actually the service provided by them could and should be said to be provided by the Airport Authority of India (for short "AAI"). It was contended on behalf of the assessee that the role of the licensee-appellant was the role of an agent and was therefore limited to collecting of fees for the services rendered by AAI. In order to answer the aforesaid issue it would be necessary to set out certain basic facts giving rise to the aforesaid issue.

C 3. The AAI entered into a licence agreement with the appellant by which the appellant was entrusted with the responsibility and the activity of collecting airport admission ticket charges on behalf of AAI Limited at Karipur Airport, Calicut. As per the said agreement the appellant was permitted to collect Rs. 50/- per visitor as airport admission ticket charges for which the appellant was required to pay an amount of Rs. 2,66,797/- per month as licence fee.

D 4. As per the aforesaid agreement the appellant was collecting the admission ticket charges as mentioned above for the period from 10.09.2004 to 31.03.2005. Some of the relevant terms and conditions of the said licence agreement which would have a bearing to the facts and circumstances of the present case are extracted hereinbelow: -

"Licence Agreement

Subject ——— AAT Contract ITB

G This Agreement made the 2nd day of April of Two thousand four between the Airports Authority of India.....

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..... A
Whereas the Authority is entitled in 'Law' to grant
licence at its Calicut Airport for the purpose of Airport
Admission at ITB so as to provide amenities and facilities
to the passengers and visitors at Airport and is in
possession of space, more fully described in the plan
annexed to this agreement, even after referred to as the
premises. B

..... C
.....
Now, therefore, this indenture witnesseth:

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4. That the Licensee shall pay all rates, assessment, out
goings and other taxes as leviable on the Licensee in
'Laws'. E

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9. That the Licensee shall equipped himself with all
necessary permits, licenses and such other
permissions as may be required under law in force
at any time with regard to the operation of the
Subject licence. F

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10. That the Licensee shall maintain such regular and
proper account books along with other supporting
documents regarding sales effected by the
Licensee in the said premises and said accounts/
documents shall all the times be kept open for
inspection by Authority in such manner as may be H

A prescribed. The Licensee shall provide to the Authority, if so required by the Authority, Statements of audited Accounts in such manner and within such period as the Authority may prescribe.

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C 12. That Authority shall provide bare space for the subject services and other expenses shall be incurred by the Licensee. However, provisions of electricity, water and drainage connections, as the case may be, if so required, for the smooth operation of the services shall be provided by the Authority.

D 13. All the times during the currency of the licence agreement, it shall be the responsibility of the licensee to obtain proper fire insurance coverage including theft and burglary in respect of all the movable and immovable assets stored or used in the licensed premises and authority shall not be responsible for any loss or damage caused to the licensee on any accounts whatsoever.

F 14. That Licensee shall operate the subject facility by charging the rate from users, as may be approved in advance by the Authority. Licensee shall exhibit the said approved charges at a conspicuous pl inside the licensed premises.

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H 5. It is evident from the aforesaid terms and conditions of the agreement that the appellant was granted licence by AAI to collect the admission ticket charges so as to provide

amenities and facilities to the passengers and visitors at the Airport. Under the said agreement, the appellant was also required to pay all rates, assessment, out goings and other taxes as leviable on the Licensee as per law. It is also clear therefrom that AAI has only provided bare space and all expenses for providing services to passengers / visitors are to be borne by the appellant.

6. As per Clause 105 (zzm) of Section 65 of Finance Act, 1994 '*taxable service*' means any service provided to any person, by Airport Authority or any person authorized by it, in an Airport or a Civil Enclave. As per Clause (3d) of Section 65 of the Finance Act, 1994 '*Airport Authority*' means AAI constituted under Section 3 of the Airports Authority of India Act, 1994 and also includes any person having charge of management of an airport or a civil enclave.

7. The Central Board of Excise and Customs by issuing a circular No. 80/10/2004 ST dated 17.09.2004 stated by way of clarification on the scope of service tax on airport services by making it clear that services provided in an airport or civil enclave to any person by AAI or by a person authorized by it or any other person having charge of management of an Airport are taxable under the aforesaid category. On the satisfaction that the appellant was required to pay service tax on airport services rendered by it under the aforesaid provisions as 'authorized person' of AAI at Karipur Airport, Calicut for the period from 10.09.2004 to 31.03.2005 a show cause notice was issued to the appellant demanding service tax amounting to Rs. 1,80,845/- and education cess amounting to Rs. 3,617/-. There was also a proposal to demand interest under Section 75 of the Finance Act, 1994 on the above service tax and education cess as well as penalty under Section 76 of the Finance Act, 1994.

8. On receipt of the aforesaid show cause notice, the appellant submitted a reply before the original authority contending *inter alia* that the Airport Authority only is

A responsible for the collection of service tax as the appellant was not permitted to collect the service tax from the public. It was also contended that the implementation of the service tax and responsibility of the collection of service tax was that of AAI as the principal service provider of the Airport and that the appellant
 B was only authorized to collect the prescribed admission charges and remit the fixed licence fees to AAI.

C 9. The adjudicating authority considered the entire matter and after careful consideration of the reply of the appellant and after giving a hearing to the appellant confirmed the demand of service tax of Rs. 1,64,106/- and education cess of Rs. 3,282/- with interest under Section 75 of the Finance Act, 1994.

D 10. Being aggrieved by the said order, appellant filed an appeal before the Commissioner of Central Excise & Customs (Appeals), Cochin. The Commissioner (Appeals), however, dismissed the said appeal, aggrieved by which, the appellant filed second appeal before the Customs Excise & Service Tax Appellate Tribunal [for short 'CESTAT'], South Zonal Bench, Bangalore. The Tribunal, allowed the appeal filed by the
 E appellant by holding that the appellant is only a collecting agent and therefore the liability to pay the service tax rest on AAI which is the actual service provider.

F 11. Being aggrieved by the said judgment and order passed by CESTAT, the department filed Central Excise Appeal No. 28/2008 before the Kerala High Court. By the impugned judgment and order the High Court allowed the appeal with a direction to the original authority to verify whether AAI has paid service tax on the admission tickets during the relevant period and, if in case, AAI had paid the said service
 G tax, the appellant would stand exonerated from the liability; otherwise, service tax would be recovered from the appellant as per the provisions of the Act. Being aggrieved by the aforesaid impugned judgment and order of the High Court the present appeal was filed by the appellant on which we heard
 H the counsel appearing for the parties.

12. We have already set out the issue which falls for our consideration in the present appeal. In our opinion as to whether or not the appellant is a service provider and, therefore, liable to pay the service tax rest on the interpretation of the aforementioned circular and also the aforesaid provisions which are already referred to hereinbefore.

13. The licence agreement clearly stipulates that AAI is entitled in law to grant licence at its Calicut Airport for the purpose of airport admission so as to provide amenities and facilities to passengers and visitors at the Airport and that the licensee, i.e., appellant, has agreed under the licence agreement to render such services to AAI on the terms and conditions mentioned in the said licence agreement. One of such stipulations was that the licensee would pay all rates, assessment, out goings and other taxes as leviable on the licensee in laws.

14. Another responsibility that vested on the licensee was to maintain regular and proper account books along with other supporting documents regarding sales effected by the licensee in the said premises which could be inspected by AAI in such manner as may be prescribed. The licensee was also responsible under the licence agreement to operate the subject facility by charging the rate from users, as may be approved in advance by AAI.

15. Albeit, it is true that the appellant deposits a licence fees of Rs. 2,66,797/- per month to AAI but it collects the required fees from the users of the facility and provide all facilities to such customers. Section 65 Clause 105(zm) of Finance Act, 1994 defines '*taxable service*' to mean any person, by airports authority or any person authorised by it, in an airport or a civil enclave. It is thus crystal clear that the appellant being a person authorized by AAI to provide service in express terms and conditions, it becomes liable to pay such tax as it was an authorized person to provide taxable service and collect the admission ticket charges on a contract basis.

A 16. Under the terms and conditions set out hereinbefore of the agreement the appellant is authorized to provide all the services as mentioned therein and, therefore, as per the statutory definition the appellant steps into the shoes of AAI for the service provided on the basis of the authorization and becomes liable to pay such taxes in terms of the operation of Section 65 Clause 105 (zzm) of the Finance Act, 1994.

17. Consequently, we find no merit in this appeal and the same is dismissed without any order as to costs.

C B.B.B. Appeal dismissed.