

(2009) 07 KL CK 0067

In the High Court Of Kerala

Case No : C.E. Appeal No's. 16, 19, 24 and 30 of 2008

Commissioner, Central Excise

APPELLANT

Vs

Cochin International Airport Ltd.

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Airports Authority of India Act, 1994 — Section 3
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2009) 227 CTR 304 : (2010) 27 VST 355

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : P. Parameswaran Nair, Asst. Solicitor, for the Appellant; M. Pathrose Matthai, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The connected appeals are filed by the Commissioner of Central Excise against the orders of the Tribunal holding that the respondent is not liable to pay service tax on "user's fee" collected at the rate of Rs. 500 from every outgoing international passenger. When the appeals were taken up, counsel for the respondent submitted that the appeals are delayed and contended that by virtue of the decision of the Supreme Court in Commissioner of Customs & Central Excise v. Hongo India (P) Ltd. reported in [2009] 24 VST 298 : [2009] 5 SCC 791, the High Court has no power to condone delay in the appeal filed u/s 35G of the Central Excise Act. However, standing counsel, Sri John Varghese appearing for the appellants contended that the judgment of the Supreme Court is got over through the amendment now proposed with retrospective effect granting authority to the High Court to condone delay in filing appeal, if the High Court is of the view that there is reasonable ground for the delay. However, we do not think we should consider this issue because after hearing the case on the merits we felt that the appeals deserve to be only dismissed for the following reasons.

2. Admittedly the amount collected which is subject-matter of levy is the "user's fee" collected by the airport at the rate of Rs. 500 for every outgoing international passenger. Neither domestic passengers nor international passengers reaching the airport from any foreign destination are liable to pay user's fee. The demand of service tax is u/s 65(105)(zzm) which is as follows:

Section 65. (105) "taxable service" means any service provided or to be provided,:

...

(zzm) to any person, by the airports authority or any person authorised by it, in an airport or a civil enclave.

3. Counsel for the appellants referred to the definition of "airports authority" contained in Sub-section (3d) of Section 65 and contended that a private airport owned and managed by the respondent is also covered by the definition. The definition clause reads as follows:

Section 65. (3d) "airports authority" means the Airports Authority of India constituted u/s 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having charge of management of an airport or a civil enclave.

4. On going through the above provision, we are of the view that if the levy is permissible, then the respondent certainly would be liable because by virtue of the inclusive definition the respondent-company owning and managing the airport answers the description of airports authority. The next question to be considered is whether the respondent is liable for service tax on the user's fee collected from outgoing international passengers. As already noted, no user's fee is collected from any domestic passenger or any international passenger landing at the airport from a foreign destination. The amount charged is a flat figure of Rs. 500 from every outgoing international passenger. The respondent's case that the amount collected is not for any service rendered is obvious because services rendered to passengers are almost similar in nature and there is no reason why international passengers arriving from foreign destinations are exonerated. Further, domestic terminal of the airport provides almost same services. However, no user's fee is collected from any passenger travelling in the domestic sector. The Tribunal has referred to the decision taken by the board of directors of the respondent-company in their meeting on March 27, 2000 when they decided to collect user's development fee "for enhancing the revenue of the airport to cope up with the expenditure and debt servicing". It is clear from the decision of the board of directors of the company that purpose is to augment revenue for the airport and is not towards consideration for any service rendered to the outgoing international passenger. Admittedly all passengers leaving the airport and arriving from outside India receive the same services and if any service is to be charged, the same must be charged on all. Further, ground handling services in the airport are rendered by Air India and the traffic and

other operational matters are handled by airport authority. The Tribunal noticed that for the specific services rendered by these agencies, service tax is also collected and remitted by them. Even though the airport is also rendering services to the passengers like restaurants, air-conditioning, facility for foreign exchange transactions by allowing branches of banks and other dealers to operate, duty-free shop for incoming and outgoing passengers to purchase articles, etc., service tax can be demanded for such services only when the airport collects service charge for any of the services rendered by them. A single judge of this Court in the judgment reported in a batch case namely, O. P. No. 13451 of 1996 and connected cases held that similar fee collected by the Kozhikode airport authority is without any justification. Even though an appeal was filed against the said judgment before the Division Bench, we are told that the Calicut airport discontinued collection of user's fee. Following this, the respondent also has stopped collection of user's fee. The facts and circumstances of the case and the evidence clearly prove beyond doubt that the user's fee collected is only for enhancing the revenue of the airport and not for any service rendered to outgoing international passengers. Section 67 defining "value of taxable services" for charging service tax says that the value of service shall be the gross amount charged by the service provider for the service provided to the recipient. Since collection of user's fee is not for any specific service rendered by them, but is a flat rate of charge to one category of passengers, namely, outgoing international passengers, it cannot be said that the amount so collected is by way of service charge. We, therefore, hold that the Tribunal rightly held that no service tax is payable for the user's fee collected by the respondent. The appeals are accordingly dismissed.