(2010) 11 KL CK 0312

In the High Court Of Kerala

Case No : C.E. Appeal No''s. 30, 33, 34 and 35 of 2010

Commissioner of Central Excise — APPELLANT

Vs

Cochin International Airport Ltd. — RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Citation : (2011) 2 KLJ 76 : (2011) 24 STR 20 : (2011) 33 STT 489 : (2011) 42 VST 218

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : John Varghese, for Central Board of Excise, for the Appellant;

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—These connected appeals are filed by the Central Excise and Service Tax Department challenging the orders

of the Customs, Excise and Service Tax Appellate Tribunal vacating the service tax demands on the Respondent on the royalty charge collected

from M/s. Air India Ltd., for ground handling entrusted to them, charges collected from M/s. Thomas Cook for providing space for operating

foreign exchange facilities, charges collected from M/s. Atlas Jewellery for providing space for running the duty-free gold sale shop, etc. We have

heard standing counsel Sri John Varghese appearing for the Appellant and have gone through the orders of the Tribunal.

2. The first question raised pertains to the Appellant''s demands against the Kochi International Airport Authority Limited for service tax on the

royalty received from M/s. Air India Ltd. The Tribunal, after going through the agreement between the Respondent and M/s. Air India, found that

M/s. Air India Ltd., is entrusted with ground handling services, including passenger handling, ramp handling, cargo flight handling on ramp including

loading of the cargo, etc.

3. The arrangement between M/s. Air India Ltd. and Respondent is that M/s. Air India Ltd., will collect charges from other airlines for the services

rendered and on the entire collections M/s. Air India Ltd., will collect and remit applicable service tax to the Government. Certificate from M/s. Air

India Ltd., is referred to in Tribunal''s order wherein it is stated that M/s. Air India Ltd., is remitting service tax on the entire collections made by

them. What is paid to the Respondent by M/s. Air India Ltd., towards royalty is 18.5 per cent of the gross receipts collected by them for services

rendered on which service tax was already collected and remitted by M/s. Air India Ltd. Since the Tribunal found that royalty collected by

Respondent from M/s. Air India Ltd., is part of the charges collected by them on which service tax is collected and remitted by M/s. Air India

Ltd., the Tribunal rightly held that the Respondent is not rendering any service to M/s. Air India Ltd., for the royalty paid by them and so much so,

there is no scope for levy of service tax on the royalty paid by M/s. Air India Ltd., to the Respondent, which is part of the value of taxable service

on which M/s. Air India Ltd., has paid service tax.

4. So far as the demand of service tax against M/s. Thomas Cook, M/s. Atlas Jewellery and B.P.C.L are concerned, we find from the Tribunal''s

order that, after going through the agreements between the Respondent and those parties, the Tribunal found that the collections by the

Respondent are only by way of licence charges or rentals for giving the space for specified periods. Obviously, no service is rendered by the

Respondent and collections are by way of rent or licence charges for allowing the licensees to occupy the space for limited period. So much so, in

our view, the Tribunal rightly held that the Respondent is not liable to pay the service tax for the amounts received from these three concerns.

5. The next question raised is with regard to the Respondent''s liability for service tax on collections for disposal of garbage. Even though there is

no written agreement for the collections, the Tribunal, on facts, found that the charges represent value for the materials sold and not for any service

rendered by the Respondent. So much so, we do not find any ground to interfere with the Tribunal''s order vacating the service tax demands from

the Respondent for the collections and from the parties referred above. We do not find any merit in the appeals filed by the Department.

Consequently, the appeals are dismissed.

