(2009) 07 KL CK 0126

In the High Court Of Kerala

Case No : Central Excise Appeal No. 28 of 2008

Commissioner of Central Excise APPELLANT

Vs

P.C. Paulose RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:
Finance Act, 1994 — Section 65(105), 67

Citation : (2010) 19 STR 487 : (2011) 38 VST 13

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

Bench : Division Bench

Advocate : P. Parameswaran Nair, ASG and John Varghese, for the Appellant; Abraham Vakkanal, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Appeal is filed by the department challenging the order of the Tribunal holding that respondent is not liable for payment of service tax u/s 65(105)(zzm) of the Finance Act, 1994 which provides for service tax on any service provided to a person by Airport Authority or any person authorised by it in an Airport or a Civil Enclave, The respondent entered into a licence agreement with Calicut Airport Authority Ltd. whereunder he got the right to collect entrance fee from visitors to the Airport. Since respondent was authorised to collect entrance fee which is for services provided to the customers in the Airport, the Department issued notice demanding service tax. On appeal, the demand was confirmed by the first appellate authority and therefore, respondent filed appeal before the Tribunal. The Tribunal held that the Airport Authority only is rendering service and therefore, respondent cannot be held liable. It is against this order the department has filed this appeal before us. We have heard Sri John Varghese appearing for the appellant and Senior Counsel Sri Abraham Vakkanal appearing for the respondent.

2. The question to be considered is as to whether respondent or the Airport Authority is liable to pay service tax for the services rendered to visitors who

enjoy the facility by remitting entrance fee to the respondent. Counsel for the respondent rightly contended that services in the Airport are provided and rendered by the Airport Authority and therefore, he is not the service provider. However, Standing Counsel appearing for the appellant contended that once licence is issued to the respondent, respondent steps into the shoe of the service provider and he permits visitors to enjoy the service on collection of entrance fee. In answer to this argument, counsel for the respondent contended that licence fee paid by respondent to the Airport Authority constitutes consideration for the services provided in the Airport and so much so, the Airport Authority is liable to pay service tax on the entire licence fee which according to him, is in fact done. However, on going through the Tribunal''s order, there is no finding that during this period i.e. from 10-9-2004 to 31-3-2005, the Airport Authority has paid service tax for the entrance tickets issued by the respondent for Airport admission. Valuation of taxable service as contained in Section 67 of the Act covers the gross amount charged by the service provider for such service provided or to be provided by him. There can be no doubt that service tax is payable for the services provided in the Airport to the visitors who have paid for the entrance namely, the admission ticket fee. Therefore, the gross amount charged for the service provided is the total collection of admission fee by the respondent from visitors, no matter the Airport which in fact provided the service would have got only the licence fee paid by the respondent. Even though respondent is not providing the service in the Airport which is done by the Airport Authority, once the licence is given by the Airport to the respondent to permit entry and allow enjoyment of the services provided there to the customers, respondent in fact becomes the service provider, though he is only acting as an agent under the licence agreement with the Airport Authority. We are, therefore, of the view that respondent being the service provider is liable to pay the service tax and the Tribunal''s finding to the contrary is untenable. We, therefore, reverse the findings of the Tribunal and allow the department appeal.

3. Even though there is nothing in the records to indicate that the Airport Authority has paid the service tax for the very same period it is demanded from the respondent, in view of the contention by the respondent that Airport Authority after clarification from Central Board has paid the service tax for this period, we feel respondent should be exonerated from liability, if in fact the Airport Authority has paid service tax for the period from 10-9-2004 to 31-3-2005. The original authority is directed to verify the claim of the respondent and verify payments made by Airport Authority towards service tax for Airport admission tickets issued by the respondent and if the service tax is paid by the Airport Authority for the relevant period, then the respondent will be exonerated from liability or otherwise, service tax will be recovered from the respondent as he is liable under the Act as held above.

4. Counsel for the respondent submitted that though the respondent was willing to collect service tax, the Airport Authority prohibited collection until 31-3-2009. Thereafter the respondent was directed to collect service tax and the respondent

collected service tax and remitted the same. We do not think the issue between the respondent and the Airport Company can be considered by us in this proceeding and it is for the respondent to seek appropriate relief.

