(2011) 01 SC CK 0116

In the Supreme Court Of India

Case No : C.A. No. 483 of 2011

P.C. Paulose, Sparkway Enterprises — APPELLANT

Vs

Commissioner of Central Excise and Customs — RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Airports Authority of India Act, 1994 — Section 3
Finance Act, 1994 — Section 65

Citation : (2011) AIRSCW 863 : (2011) 238 CTR 70 : (2011) 184 ECR 1 : (2011) 1 JT 465 : (2011) 1 KLJ 45 : (2011) 1 KLT 446 : (2011) 1 RCR(Civil) 841 : (2011) 1 SCALE 420 : (2011) 2 SCC 230 : (2011) 1 SCR 872 : (2011) 21 STR 353 : (2011) 30 STT 241 : (2011) 1 Supreme

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The Airport Authority of India Limited (herein after referred to as 'the AAF) 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 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.

2. As per the licence agreement, the Appellant was collecting the admission ticket charges as mentioned above for the period from 10.09.2004 to 31.03.2005.

3. It was evident from the terms and conditions of the licence 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 was also clear therefrom that AAI has only provided bare space and all

expenses for providing services to passengers/visitors were to be borne by the Appellant.

4. 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 u/s 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.

5. The Central Board of Excise and Customs by issuing a Circular No. 80/10/2004 ST dated 17.09.2004 clarified 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.

6. On receipt of the aforesaid show cause notice, the Appellant submitted a reply before the original authority conending, inter alia, that the Airport Authority only is 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 was only authorized to collect the prescribed admission charges and remit the fixed licence fees to AAI.

7. The adjudicating authority considered the matter confirmed the demand of service tax. 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 Appellant by holding that the Appellant is only a collecting agent and therefore the liability to pay the service tax rests on AAI which is the actual service provider.

8. 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 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. Being aggrieved by the aforesaid impugned judgment and order of the High Court, the Appellant approached the Supreme Court by filing

the present appeal. Supreme court held that under the terms and conditions set out in the agreement the Appellant was authorized to provide all the services as mentioned therein and, therefore, as per the statutory definition the Appellant stepped into the shoes of AAI for the service provided on the basis of the authorization and became liable to pay such taxes in terms of the operation of Section 65 Clause 105(zzm) of the Finance Act, 1994. Appeal dismissed.

