CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60647 of 2016

[Arising out of Order-in-Appeal No. 158/ST/Appeal-II/MK/GGN/2016-17 dated 30.09.2016 passed by the Commissioner (Appeals), Service Tax, Gurgaon, Haryana]

M/s British Airways PLC India Branch ......**Appellant**
AIPL Business Club Wing-1, 7th Floor, Maidawas Road, Sector-62, Gurugram, Haryana-122101

VERSUS

Commissioner of Central Goods & Service Tax, Gurugram ......**Respondent**
Plot No.36-37, Sector-32, Gurugram, Haryana-122001

APPEARANCE:

Ms. Priyanka Rathi, Advocate for the Appellant

Ms. Amita Gupta, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60912/2025

DATE OF HEARING: 21.07.2025
DATE OF DECISION: 30.07.2025

P.ANJANI KUMAR:

The appellants, M/s British Airways PLC India Branch, are engaged in Provision of Transport of Passengers by Air Service; the appellants have been issued two show cause notices dated 17.04.2013 and 23.04.2014, for the periods 2007-08 to 2011-12 and 2012-13, demanding service tax on the Excess Baggage Charges (EBC) collected from the passengers and discount received by them from Airport Authority of India on prompt payment of Passenger Service Fee (PSF); extended period was invoked in the show cause notice dated 17.04.2013; the original authority vide Order-in-Original dated 31.03.2016 confirmed demand of service tax of Rs.68,98,630/- raised vide above show cause notices; on an appeal, learned Commissioner (Appeals) vide impugned order dated 30.09.2016 affirmed the Order-in-Original. Hence, this appeal.

2. Ms. Priyanka Rathi, learned Counsel for the appellants, submits that the issue is decided against the appellants and therefore, the appellant is contesting the invocation of extended period, imposition of penalty and denial of benefit of abatement under Notification No.06/2012-ST dated 17.03.2012. She submits that there is no element of fraud, suppression etc. with intent to evade payment of duty; the appellants proactively disclosed the information to the Department as early as 2006 when the audit was conducted; it was on the advice of the Revenue that the appellant paid service tax, on the EBC, for the period 2004-05, under the Heading "Transport of Goods by Air Service"; the same was accepted by the Department vide letter dated 16.07.2008; thereafter, transport of cargo by air was exempted vide Notification No.29/2005-ST dated 15.07.2005 and therefore, the appellants did not pay service tax for the period 2005 to 2011-12; now the Department cannot allege fraud or suppression etc. She submits that, in addition to the above, Department was well aware of the

fact of receipt of discount on the PSF paid to Airport Authority of India, as evidenced by the letter dated 02.02.2007. She relies on the following cases to contend that when the issue is squarely in the knowledge of the Revenue and when the matter pertains to interpretation of law, extended period cannot be invoked:

- M/s Pahwa Chemicals – 2005 (189) ELT 257 (SC)
- Ajit India – 2018 (19) GSTL 659 (Tri. Mumbai) affirmed by (2023) 8 CENTAX 152 (SC)
- Adani Gas Ltd – 2017 (356) ELT 54 (Guj.)
- Teena Gupta – (2025) 27 CENTAX 79 (Tri. Del.)
- Kingfisher Airlines Ltd. – 2015 (40) STR 1159 (T) upheld in Jet Airways (I) Ltd. – 2017 (48) STR J42 (SC)
- International Merchandising Co. LLC – (2022) 1 CENTAX 31 (SC)
- Maruti Suzuki India Ltd – (2024) 22 CENTAX 112 (Tri. Chd.)
- British Airways – 2014-TIOL-979-CESTAT-DELHI
- Uniworth Textiles – (2013) 9 SCC 753
- Escorts – (2015) 9 SCC 109
- Magus Metals – (2017) 16 SCC 491
- Confederation of Indian Industries – (2024) 20 CENTAX 239 (Tri. Chd.)
- Spicejet Ltd. – (2023) 10 CENTAX 275 (T. Del.)

3. Ms. Amita Gupta, learned Authorized Representative for the Department reiterates the findings of the impugned order.

4. Heard both sides and perused the records of the case. Revenue seeks to recover service tax on EBC recovered by the appellants from the passengers and on the discount given by the airport authority on PSF paid by the appellants. We find that the appellants fairly submit that the issue is decided against them;

however, they contest the invocation of extended period and denial of abatement under Notification No.06/2012. We find from the records of the case that the appellants are regular payers of service tax and are submitting ST-3 Returns regularly; Revenue has conducted the audit of the appellants over the years and have paid service tax on the EBC recovered under the Head "Transport of Goods by Air Service" on the advice of the Revenue which stands acknowledged by the Revenue vide letter dated 16.07.2008; similarly, the fact of receipt of discount/ commission by the appellants from the airport authority is also in the knowledge of the Department as can be seen from the letter dated 02.07.2007 submitted by the appellants and the fact acknowledged by the Department vide letter dated 18.07.2007. It can be seen that the appellant has informed the Department about the commission/ discount on PSF availed by them from AAI. In case of EBC, the appellants have followed the directions of the Revenue. Under the circumstances, we find that extended period cannot be invoked as no suppression, mis-declaration etc. with intent to evade payment of duty cannot be alleged.

5. Moreover, we find that the issue is interpretational in nature and going by this reason also, extended period cannot be invoked as held in a catena of judgments. We find that the Tribunal in the case of Kingfisher Airlines Ltd. (supra) held that:

> "26.1 So far the question of invocation of extended period is concerned, I find that there is no case of any suppression on the part of the appellant Airlines. The appellant Airlines have

> duly disclosed the receipts from passengers towards excess baggage in their books of account, maintained in the ordinary course of business. I find that the issue is one of interpretation of the taxing statute and as such being debatable, there is no element of any fraud or suppression. Accordingly, the extended period of limitation is held not invocable."

6. We find that in a number of cases, it was held that extended period cannot be invoked when the Revenue was in the knowledge of the facts of the case. In the instant case, the facts were not only in the knowledge of the Department but the same were proactively brought to the notice of the appellants and the advice given by the Department was followed by the appellants. Therefore, extended period cannot be invoked. In the absence of *mens rea*, penalties also cannot be imposed.

7. In the result, we allow the appeal partly by setting aside the demand confirmed for the extended period and by setting aside all penalties imposed. Demand for the normal period is, however, confirmed

(Order pronounced in the open court on 30/07/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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