IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 24/01/2017.
DATE OF DECISION : 01/03/2017.

Service Tax Appeal No. 913 of 2010

[Arising out of the Order-in-Original No. 19/JM/2010 dated 17/03/2010 passed by The Commissioner (Adjudication), Service Tax, New Delhi.]

M/s Airport Authority of India Appellant

Versus

CST, Delhi Respondent

Appearance

Shri Anil Kumar Kathuria, (Additional standby Counsel) – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52023/2017 Dated : 01/03/2017

Per. B. Ravichandran :-

The appeal is against order dated 17/03/2010 of Commissioner (Adjudication), Service Tax, Delhi. The appellants are engaged in managing various airports in India. They were registered with the Department for payment of service tax under various categories. The dispute in the present case relates to the period from 01/10/2003 to 31/03/2007. The service tax liability was sought to be confirmed on the appellant under the category of "storage and warehousing service" upto 09/09/2004 and under "airport services" w.e.f. 10/09/2004. The appellants contended that the services now sought to be categorized under these tax entries were actually "cargo handling services" and as they relate to export cargo they are excluded from tax liability. The Original Authority adjudicated the case and confirmed service tax liability of Rs. 8,59,06,238/-. Penalties were also imposed under Section 77 and 78 of the Act.

2. The learned Counsel appearing for the appellant submitted that the services on which service tax has been confirmed are all relating to handling of export cargo and are excluded from tax entry of "cargo handling service". These are Terminal Charges, Unitization Charges, X-Ray Charges, Export Packing and Export Miscellaneous Charges. He submitted that the services rendered under these heads cannot be categorized as "storage and warehousing services". The appellants are mainly engaged in handling of cargo which involves a score of connected activities like unloading, carting, x-ray, unitization etc. From the time a cargo is accepted from the exporter till it is put on aircraft a host of activities were undertaken by the appellant. They are not providing storage or warehousing facilities to the cargo brought to the airport. Whatever period of storage is involved is during the course of completion of processes for shipment of cargo. The cargo is kept in hold and the appellants are always engaged in

timely shipment of the cargo and not in storing or warehousing the cargo. As such, there is no tax liability on the appellant on activities relating to handling of export cargo in the airport. For the period post 10/09/2004, after the introduction of the "airport services" as a specific tax heading, the learned Counsel submitted that the classification of their activity will continue to be under "cargo handling service" as the same is more specific than a general "airport service".

3. The learned Counsel strongly contested the demand on the question of time bar also. The demand in the present case was issued invoking allegation of suppression of fact, willful mis-statement, with an intention to evade tax. The appellant is a Government body coming under the Ministry of Civil Aviation and created by an Act of Parliament. There can be no malafide intention on their part while dealing with the tax matters. The learned Counsel submitted that officers of DGCEI conducted enquiry earlier also and a show cause notice dated 18/07/2006 was issued to them for demanding service tax. The said notice did not cover handling charges, unitization charges and X-ray charges under airport services. Regular audits were also conducted on their accounts. In fact, the Board clarified, in response to their enquiry, vide Circular dated 01/08/2002 regarding non-liability to tax of the activity of handling of trans-shipment relating to export cargo. The learned Counsel pleaded for setting aside the demand for extended period and also penalties imposed on the appellant.

4. The learned AR submitted that the appellants have provided various services relating to cargo in the airport and the same is taxable as “storage and warehouse service” upto 09/09/2004 and thereafter as “airport service” from 10/09/2004. Reliance was placed on the Board’s letter dated 28/02/2006 to state when newly specified services were created for tax purpose, some of the activities might have been already covered by the existing category of taxable services. Regarding demand for extended period, the learned AR submitted the appellants did not provide required data even after repeated request. In fact the demand was issued for certain period taking prorate figures, as the appellants failed to provide required data when called for.

5. We have heard both the sides and perused the appeal records. On the first issue whether the appellants were engaged in providing taxable service under “storage and warehousing”, we note that based on the submissions made and the findings recorded in the impugned order, that the appellants are basically engaged in various composite activities starting from receipt, shifting, handling, loading, packaging in suitable manner, security X-ray, scanning and loading of cargo for outward movement by aircraft. These activities are not relating to storage and warehousing of cargo. To complete these processes some time is taken and during this time, the cargo is held by the appellant in a secured area. The cargo brought by exporters are not for storage or warehousing in the airport. The cargo is brought for shipment

and the shipment happens at the earliest available opportunity. Till the shipment, the cargo is held for a short duration by the appellant. During this duration, various activities to make the cargo fit for shipment is undertaken. As such, we are in agreement with the appellant that they are not involved in providing storage and warehousing service with reference to the cargo. As such, there is no tax liability under this tax entry for the appellant upto 09/09/2004.

6. With the introduction of airport service w.e.f. 10/09/2004, we find that the appellants are correctly liable to tax under this tax entry. The taxable service under this category is defined in Section 65 (zzm) as service provided to any person, by airport authority or by any other person, in any airport or a civil enclave. Admittedly the appellants are an airport authority involved in providing service in the airport. The claim of the appellant is that 'cargo handling service' is more specific than 'airport service'. We are not in agreement with such proposition. While cargo handling may be specific with reference to services rendered in connection with cargo, 'airport service' is also specific to the extent that this service can be rendered only by airport authority or any other person in a designated airport or a civil enclave. The service is area specific. As such, we are not in agreement that this is a general category of tax entry. On careful consideration of the submission made by the appellant, we are of the opinion that the services rendered by the appellant are taxable under the category airport service w.e.f. 10/09/2004.

7. The demand for service tax is also contested on the question of time bar. We note that when the cargo handling service was introduced in 2002, clarifications were issued to the appellant, on their request, to state that the services relating to export cargo are not liable to tax. Admittedly, the appellants continued to provide similar set of service all through out. This fact is not disputed. However, after the introduction of specific service under the head 'airport services' wherein all type of services rendered within the specific area of airport is sought to be taxed under one heading, the appellants liability arises. There is no contest to the fact that appellants are airport authority and are providing service in the said airport and are squarely covered by the airport services. This is even without reference to the proviso inserted in the tax entry through Finance Act, 2010. However, to invoke extended period for demand of service tax against the appellant we find no tenable justification recorded by the lower Authority. The appellants are a Government of India organization and there could be a general, rebuttable, presumption regarding non-existence of a malafide intend to evade tax. The Revenue has to rebut such presumption with specific evidences. None submission of certain details in time, introduction of new tax entry and self-assessment by the assessee/appellant cannot be the grounds to invoke demand for extended period. The appellant being an airport authority rendering airport services is manifestly known to tax authorities.

The appellants are registered with the Department and discharging service tax under various categories. The dispute in the present case relates to various activities relating to export cargo. It may not be incorrect to hold that on such activity the appellant continued to entertain a bonafide view that these are non-taxable services. We find that the ingredients for invoking extended period of demand have not been convincingly brought out in the impugned order and as such the demand against the appellant should be restricted to the normal period only. The Original Authority recorded that the appellants did not show the amount received on these activities in their return and, hence, there is a suppression of fact. As already mentioned here-in-above, that these activities were not subjected to levy as they were relating to export cargo till 09/09/2004. The all covering entry of airport service was brought in w.e.f. 10/09/2004. As such, we find no justification for the allegation of fraud, collusion, willful mis-statement and intention to evade tax against the appellant. Accordingly, the service tax liability shall be restricted to the normal period. On the same reasons we set aside the penalty imposed on the appellant under Section 77 and 78 of the Finance Act, 1994.

8. In view of the above discussion and analysis, we uphold the liability of the appellant for service tax under airport services. We hold that the demand shall be restricted to the normal period

with no liability to penalties. The appeal is disposed of in the above terms.

(Order pronounced in open court on 01/03/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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