CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87057 OF 2016
WITH
SERVICE TAX APPLICATION (MISC) NO: 86631 OF 2025
(on behalf of appellant)

[Arising out of Order-in-Original No: 09-10/ST-V/SKD/2015-16 dated 10th February 2016 passed by the Commissioner of Service Tax-V, Mumbai.]

Air India Ltd
2nd Floor, Finance Building, Old Airport, Kalina
Santacruz (East), Mumbai – 400 029 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai East
3rd Floor, Utpad Shulk Building
Bandra-Kurla Complex, Bandra, Mumbai – 400 051 ***...Respondent***

AND

SERVICE TAX APPEAL NO: 87090 OF 2016
WITH
SERVICE TAX APPLICATION (MISC) NO: 85111 OF 2026
(on behalf of appellant)

[Arising out of Order-in-Original No: 09-10/ST-V/SKD/2015-16 dated 10th February 2016 passed by the Commissioner of Service Tax – V, Mumbai.]

Commissioner of CGST & Central Excise
Mumbai East
3rd Floor, Utpad Shulk Building
Bandra-Kurla Complex, Bandra, Mumbai – 400 051 … ***Appellant***

versus

Air India Ltd
2nd Floor, Finance Building, Old Airport, Kalina
Santacruz (East), Mumbai – 400 029 ***...Respondent***

APPEARANCE:

Shri Piyush Chhajed, Chartered Accountant for the assesse-appellant
Shri S Shashank Kumar Yadav, Additional Commissioner (AR) for Revenue

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO: 85907-85908/2026

DATE OF HEARING: 07/05/2026
DATE OF DECISION: 07/05/2026

PER: S.K. MOHANTY

Miscellaneous applications seeking change of cause title is allowed.

2. Heard both sides and examined case records.

3. The appellant herein are engaged *inter alia* in the provision of various taxable services defined under the Finance Act, 1994. During the course of audit of the records maintained by the appellants the Department had observed that they had raised bills to various airlines for handling of their flights and security services provided to their flights at various airports other than Mumbai airport. It was further observed that the appellant handles aircrafts of various airlines, for which service tax is charged on the handling charges and the same is applicable under 'Business Auxiliary Service (BAS)'. In addition to handling charges, the

appellant charged the airlines (clients) 'royalty' amount, which is 5% of the handling charges. No service tax liability was discharged on such handling charges. Proceedings were initiated by the Department to seek recovery of the service tax amount under the taxable category of 'Business Auxiliary Service'. The show cause notice No. 149/ADC/DIV-III/2012-13 dated 19th October 2012 was issued under the *proviso* to Section 73(1) of Chapter V of Finance Act, 1994 which was settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, another show cause notice No. 1034/Commr/2013-14 dated 22nd November 2013 and show cause notice No. 28/Commr/2014-15 dated 10th April 2015 were issued by the Department under Section 73(1A) of Finance Act, 1994. The said two show cause notices were adjudicated *vide* the impugned order dated 10th February 2016 wherein the proposals made therein were confirmed against the assessee-appellant.

4. The assessee-appellant have assailed the impugned order mainly on the ground that the grounds raised in the show cause notice dated 19th October 2012 and in the show cause notice dated 22nd November 2013 and 20th April 2015 were entirely different and thus the provisions of Section 73(1A) of Finance Act, 1994 cannot be invoked seeking recovery of the short-paid service tax amount from the assesse-appellants. The assessee-appellant further contended that since in the two show cause notices the provisions of Section 73(1) of Finance Act, 1994, were not invoked

the adjudged demands confirmed in the impugned order cannot be sustained on the ground of jurisdiction.

5. On examination of the case records, we find that the show cause notice dated 19th October 2012 was issued to the assessee-appellant for recovery of service tax on the 'royalty' amount paid by them to the Airport Authority of India (AAI). The other show cause notices dated 22nd November 2013 and 10th April 2015 were issued seeking confirmation of service tax demand under the taxable category of 'Business Support Services (BSS)'. Since the grounds in these show cause notices are entirely on different footing the said two show cause notices should have been issued under Section 73(1) of Finance Act, 1994. Since Section 73(1A) of Finance Act, 1994 alone invoked for recovery of service tax demand in these two show cause notices, in our considered view, the subsequent proceedings pursuant to those show cause notices cannot be sustained in the eyes of law in the present case. Since the impugned order has confirmed the adjudged demands as proposed for recovery in the show cause notices dated 23rd November 2013 and 10th April 2015 issued under Section 73(1A) *ibid* such demands confirmed against the assessee-appellant cannot be sustained.

6. In view of the foregoing discussion, we do not find any merits in the impugned order insofar as it has confirmed service tax demand proposed for recovery in the show cause notices dated 23rd November 2013 and 10th April 2015. Therefore, the

impugned order is set aside and the appeal is allowed in favour of the assessee-appellant.

7. Revenue has also filed appeal against the impugned order dated 10th February 2016 on the ground that there is mismatch of figures between show cause notices and the amounts in the impugned order owing to cum-tax benefit. Since we have decided the appeal of the assessee-appellant solely on the ground of jurisdiction for issuance of show cause notice, we are of the view that the grounds assailed in the Revenue's appeal also cannot be sustained on merits. Therefore, the appeal filed by Revenue is dismissed.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

**/as*