

Airports Authority of India Vs. Commissioner of Service Tax

Civil Appeal No. 17405/2017 · Supreme Court of India · 2025-09-23 · Pankaj Mithal · Prasanna B. Varale · F2J-C-1200

Full judgment text

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[Civil Appeal No. 17405/2017]

Pankaj Mithal, J.

1. Heard Mr. Y. K. Kapur, learned counsel for the appellant and Ms. Nisha Bagchi, learned senior counsel for the respondent.

2. This is an appeal under Section 35L of the Central Excise Act, 1944, against the judgment and order dated 01.03.2017 pronounced by Customs, Excise & Service Tax Appellate Tribunal¹ in Service Tax Appeal No. 913 of 20102.

3. The appellant-Airports Authority of India, is a Government of India organization under the Ministry of Civil Aviation and is engaged in managing various airports in India. It is registered with the Service Tax Department for payment of service tax.

4. The appellant in discharge of its duties, handle cargo on airports including export cargo which involves a number of activities like unloading, carting, X-ray, export packing, etc. These services are rendered from the time the cargo is accepted for shipment till it is placed on the aircraft.

5. The Commissioner (Adjudication), Service Tax, Delhi vide order dated 17.03.2010 confirmed the service tax liability upon the appellant for the period 01.10.2003 to 31.03.2007 under the category of "Storage and Warehousing Service" up to 09.09.2004 and w.e.f. 10.09.2004 under the category "Airport Services".

6. The aforesaid order was assailed by the appellant in an appeal before the CESTAT, which has been disposed of by the order impugned, confirming the service tax liability under the category "Airport Services" with effect from 10.09.2004.

7. Mr. Y. K. Kapur, learned counsel appearing for the appellant, submitted that the services on which the service tax has been confirmed are all relating to handling of export cargo and as such, stand excluded under Subsection (23) of Section 65 of the Finance Act, 1994.

8. Learned counsel for the appellant emphasized upon the Proviso to Sub-section (23) of Section 65 of the Act to submit that the handling of export cargo is excluded from the "cargo handling service" and as such, is not covered under the taxable service as defined under Sub-section (105) of Section 65 of the Act.

9. At the outset, it would be pertinent to point out that Section 65 of the Act is not the charging section but a provision defining various terms in connection with the service tax. Sub-section (23) of Section 65 of the Act simply defines "cargo handling service". It inter alia provides that services of loading, unloading, packing and unpacking of cargo including certain other services would amount to "cargo handling services" but would not include handling of export cargo. In other words, handling of export cargo stands excluded from the definition of "cargo handling service". The aforesaid provision does not speak about charging of service tax upon cargo handling service.

10. In order to examine whether the services rendered by the appellant at the airport in handling the export cargo are exempted from service tax, it would be prudent to first refer to Section 66 of the Act, which is the charging section.

11. Section 66 of the Act envisages levying of "Service Tax" at the rate of twelve per cent of the value of "taxable services", as referred to in the sub-clauses therein including subclause (zzm) of Sub-section (105) of Section 65 of the Act.

12. Initially, only three types of services were referred in the sub-clauses and were chargeable to service tax. With time, the services chargeable to service tax were increased, and a large number of other services were added to it.

13. "Taxable services" are defined under Sub-section (105) of Section 65 of the Act to mean any services provided or to be provided to various persons, including those falling under sub-clause (zzm), i.e. service provided to any person by Airports Authority or by any other person, in any airport or a civil enclave.

14. The aforesaid sub-clause (zzm) is wide enough to cover any kind of service provided to any person by the Airport Authorities in any airport or a civil enclave. Therefore, whatever services are provided by the Airports Authority in any airport falls under "taxable service" in view of sub-clause (zzm).

15. The relevant portion of Section 66 reads as under:

"There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses (a).....(zzm).....of clause (105) of section 65 and collected in such manner as may be prescribed."

16. The aforesaid provision provides for levy of service tax on "taxable services" as referred to in sub-clause (zzm) of Subsection (105) of Section 65 of the Act.

17. Section 65 is a section which provides for the definitions of certain terms including "cargo handling service" and "taxable service". Cargo handling service is defined in Subsection (23) whereas taxable service has been defined under Sub-section (105). The definition of taxable service read with sub-clause (zzm) means any service provided or to be provided to any person, by Airports Authority or by any other person in any airport or a civil enclave. The conjoint reading of sub-clause (zzm) with Sub-section (105) makes it clear that taxable services are those services which are provided to any person by the Airports Authority in any airport or a civil enclave.

18. The aforesaid definition of the taxable service is very wide and takes into its fold any kind of service that may be provided to any person by the Airports Authority in any airport. Accordingly, all kinds of services rendered by the Airports Authority in any airport are taxable services and are chargeable to service tax under Section 66 of the Act.

19. It may be pertinent to note that sub-clause (zzm) was introduced w.e.f. 10.09.2004. Accordingly, any kind of services whether in respect of export cargo provided by the Airports Authority to any person after inclusion of subclause (zzm) would be taxable service.

20. The definition of "cargo handling service" includes various kinds of services rendered at the airport, but it specifically excludes "handling of export cargo". Thus, "handling of export cargo" stands excluded from the "cargo handling service" but that by itself would not be sufficient to exclude it from the definition of taxable service under Sub-section (105) of Section 65 of the Act. The services rendered by the Airports Authority to any person in any airport are in the nature of taxable service and the exclusion of "export cargo" from the definition of "cargo handling service" makes no difference as to the chargeability of service tax on the services so rendered falls under the taxable service.

21. This is also the intent of the charging Section 66 of the Act, which provides that there shall be tax levied on the services referred to in sub-clauses as mentioned therein, including sub-clause (zzm). In short, any kind of services which are covered under any of the sub-clauses of Section 66, including (zzm) are chargeable to tax and are taxable service.

22. The various circulars relied upon by Mr. Y. K. Kapur, learned counsel for the appellant, are of no avail, as they are merely circulars and cannot override the express statutory provisions.

23. Accordingly, we are of the opinion that the CESTAT or the Authorities below have not erred in taxing the services rendered by the appellant in relation to export cargo as taxable service under sub-clause (zzm) of Sub-section (105) of Section 65 of the Act with effect from 10.09.2004.

24. The appeal, as such lacks merit and is, accordingly, dismissed.

25. Pending application(s), if any, shall stand disposed of.

.....J. (Pankaj Mithal)

.....J. (Prasanna B. Varale)

New Delhi;

September 23, 2025.

1 In short 'CESTAT'

2 M/s Airport Authority of India Vs. CST, Delhi

3 Hereinafter referred to as 'the Act'

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