

**SECTION 65(105)(ZM) OF THE FINANCE ACT, 1994 - AIRPORT SERVICES -  
CLARIFICATION REGARDING APPLICABILITY OF SERVICE TAX ON THE  
DEVELOPMENT FEE (DF) CHARGED AT AIRPORTS**

**LETTER**

**DATED 8-7-2011**

Representations have been received seeking clarification regarding leviability of service tax on the Development Fees charged at Airports particularly at Mumbai and Delhi by Mumbai, International Airport (P.) Ltd. and Delhi International Airport (P.) Ltd.

2. The matter have been examined. In this regard, attention is drawn to letter Dy. No. 106/Commr (ST)/2009 Pt. (TRU), dated 13-10-2010 circulated by DGST, Mumbai, for raising protective demands in the matter. Service tax is being paid on the Passenger Service Fee (PSF) and User Development Fee (UDF) and a distinction is sought to be drawn between these and the DF. The stated purpose of permitting the levy of DF is to fund for upgradation, expansion or development of the airport.

3. As per section 65(105)(*zmm*) of the Finance Act, 1994, 'airport service' is defined as any service provided or to be provided by airports authority or by any other person in any airport or a civil enclave section 65(3d) defines airport authority as "Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having the charge of management of an airport or civil enclave" section 68(1) of the Finance Act provides that every person providing taxable service to any person shall pay service tax at the rate specified in section 66. Further section 67(1) of the Finance Act, 1994 provides that where service tax is chargeable on any taxable service with reference to its value then such value shall be the gross amount charged by the service provider for such service provided or to be provided by him. In this case the Mumbai International Airport (P.) Ltd. and Delhi International Airport (P.) Ltd. are operating Mumbai and Delhi airports respectively and are providing service which is chargeable to service tax under section 66(105)(*zmm*) of the Finance Act, 1994. Similarly at other airports which are operated by Airport Authority of India the said service is provided by Airport Authority of India and chargeable to service tax under the said section. The service tax is payable on the gross amount charged from the passengers for providing such service. It is immaterial how the gross amount charged for the service is treated in the books of the service provider and to what use it is being put to. Service tax is being levied under the Finance Act, 1994 and its leviability has to be solely determined under the provisions of this Act. The factum that gross amount charged for the service is being split into two parts, of which one portion is being used for a specific purpose by the service provider, is not relevant for the purpose of determining the value of the service. The value shall be determined only under the provisions of section 67 of the Act.

4. In view of the above it is clarified that Development Fee is chargeable to service tax under the 'airport service'.

**5.** It is further clarified that the contents of this letter reflect the interpretation of the law and does not override any statutory legal provisions. It is accordingly communicated that immediate action may please be taken to safeguard revenue on the above lines.

**[F.NO.106/COMMR (ST)/2009],**