

No service tax leviable on user development fees collected by Airport authority, being a statutory levy

The Hon'ble Supreme Court in the case of ***Central GST Delhi - III v. Delhi International Airport Ltd (Civil Appeal No. 8996 of 2019 dated May 19, 2023)*** held that neither is there any compulsion to levy development fee nor is the collection conditional upon its deposit in the government treasury.

Facts:

Delhi International Airport Ltd (**"the Respondent"**) had entered into joint venture agreement with the Airports Authority of India, a corporate body created by the Airports Authority of India Act, 1994 (**"the AAI Act"**).

The Respondent agreed to undertake some activities enjoined by the AAI Act and were authorised by various notifications issued by the Central Government under Section 22A of the AAI Act to collect a "development fee" @ Rs. 100/- for every departing domestic passenger and Rs. 600/- for every departing international passenger at the concerned airports for a period of 48 months.

The show-cause notices (**"the SCN"**) was issued by the Commissioner of Service Tax, in respect of demanding payment of Service tax on the development fee collected for various periods.

The SCN were adjudicated and confirmed. The Revenue Department (**"the Appellant"**) disposed of all show cause notices by confirming demands, and also levying penalties.

Aggrieved by the Order of the Revenue department, the Respondent filed an appeal before the Customs Excise & Service Tax Appellate Tribunal (**"the CESTAT"**) allowed the Respondent's appeal, holding that the development fee collected was not liable to service tax levy.

Issue:

Whether the development fees collected by the airport on behalf of airport authority is chargeable to service tax?

Held:

The Hon'ble Supreme Courts in ***(Civil Appeal No. 8996 of 2019)*** held that:

- Observed that, development fee, collected under Section 22A of the AAI Act are statutory exactions and not fees or tariffs, as was contended by the Union of India and there is a distinction between the charges, fee and rent etc., collected under Section 22 of the AAI Act and the User Development Fee ("**UDF**") levied and collected under Section 22A of the AAI Act.
- Noted that, The UDF collected by the Respondent is to bridge the funding gap of project cost for the development of future establishment at the airports, there is nothing on record to show that any additional benefit has accrued to passengers, visitors, traders, airlines, etc., upon levy of the UDF during the period in question.
- Held that, there is neither any compulsion to levy development fee nor is the collection conditional upon its deposit in the government treasury. However, the absence of these features, in this court opinion, does not render UDF any less a statutory levy.
- Held no Service tax leviable on the UDF, being a statutory levy.

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