

Supreme Court to hear Revenue's review petitions on taxability of duty-free shops

The Hon'ble Supreme Court in ***Commissioner of CGST and Central Excise Mumbai East v. M/s. Flemingo Travel Retail Ltd [Review Petition (Civil) No. 1017 of 2023 dated August 18, 2023]*** allowed the review petition by recalling the judgement dated April 10, 2023 wherein the Hon'ble Supreme court held that Duty Free Shops at arrival or departure terminals of Airports are outside the customs frontiers of India and tagged the matter with the appeals mentioned in the signed order.

Facts:

M/s. Flemingo Travel Retail Ltd. ("**the Respondent**") has duty free shops at the arrival and departure terminals at the international airports at Mumbai and Delhi.

The Respondent filed an application before the Revenue Department ("**the Petitioner**") claiming a refund of service tax paid in respect of the charges levied by Mumbai International Airport for the period October 01, 2011 to June 30, 2017 in pursuance of a notification no. 41/2012-ST dated June 29, 2012.

However, the Adjudicating Authority vide an order dated July 05, 2019 ("**the Order**") rejected the refund claimed on the ground that the payment of service tax on renting of immovable property of the duty free shops was not liable to be refunded in terms of the provisions of the Finance Act, 1994 ("**the Finance Act**").

Aggrieved by the Order the Respondent filed an appeal before CESTAT Mumbai, who vide order dated February 10, 2022 ("**the Impugned Order**") allowed the claim of refund of service tax in relation aforesaid transaction.

Aggrieved by the Impugned Order the Respondent filed SLP before the Hon'ble Supreme Court.

The Hon'ble Supreme Court vide judgement dated April 10, 2023 dismissed the SLP and held that duty free shops situated in the arrival or departure terminals of Airports are outside the

customs frontiers of India and therefore, they cannot be saddled with any indirect taxes like the service tax.

Now, the Revenue Department filed a review petition against the judgement April 10, 2023.

Held:

The Hon'ble Supreme Court ***Review Petition (Civil) No. 1017 of 2023*** in held as under:

- Observed that, the memo of appeal lodged by the Commissioner against the judgment of the CESTAT which formed the subject matter of the appeal as well as the grounds in the review petition.
- Noted that, substantial grounds on law have been advanced by the Union Government during the course of oral hearing in support of its case that the applicable regime in regard to goods stands on a distinct footing from the regime applicable to the levy of service tax and later, under IGST.
- Further noted that, sixteen other appeals involving the same issue were stated in the synopsis to the paper book to be pending.
- Allowed the review petition by recalling the judgment dated April 10, 2023 and held that the civil appeal shall stand tagged with the above appeals. The Registry shall obtain administrative directions so that all the appeals can be clubbed together and be heard by one Bench expeditiously.
- Directed that, no coercive steps shall be taken for the recovery of the dues, pending the disposal of the appeal.

(Author can be reached at info@a2ztaxcorp.com)

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