BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.12426 to 12431 of 2024
and
W.M.P.(MD) Nos.11005, 11007, 11019, 11020, 11051, 11052, 11003, 11006, 11011, 11014, 11013 & 11016 of 2024

M/s.Malindo Airway SDN BHD.,
Rep. by its Authorised Signatory and
Regional Sales Manager Shri.T.R.Giri
New Integrated Terminal Building,
Tiruchirapalli International Airport,
Trichy Airport Road, Tiruchirapalli,
Tamil Nadu - 626 111. ... Petitioner in all W.Ps.

Vs.

State Tax Officer,
O/o.The Sales Tax Officer,
Ponmalai Assessment Circle,
Multistoried Building,
Kajamalai, Mannarpuram,
Trichy, Tamil Nadu - 626 117. ... Respondent in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the files of the respondent,

i. GSTIN 33AAICM9435C1ZK/2017-2018 in Notice dated 13.09.2023 and the Order dated 03.04.2024 bearing Ref: No.ZD330424031612W,

ii. GSTIN 33AAICM9435C1ZK/2018-2019 in Notice dated 10.10.2023 and the Order dated 04.04.2024 bearing Ref: No.ZD330424032441Y,

iii. GSTIN 33AAICM9435C1ZK/2019-2020 in Notice dated 10.10.2023 and the Order dated 05.04.2024 bearing Ref: No.ZD330424043416O,

iv. GSTIN 33AAICM9435C1ZK/2020-2021 in Notice dated 13.10.2023 and the Order dated 08.04.2024 bearing Ref: No.ZD330424070420W,

v. GSTIN 33AAICM9435C1ZK/2021-2022 in Notice dated 13.10.2023 and the Order dated 08.04.2024 bearing Ref: No.ZD330424070431T and

vi. GSTIN 33AAICM9435C1ZK/2022-2023 in Notice dated 13.10.2023 and the Order dated 08.04.2024 bearing Ref: No.ZD330424070475H,

and quash the said notices and the orders as illegal, arbitrary, unconstitutional and violative of principles of natural justice.

For Petitioner in all W.Ps.	: Mr.A.Kumar, Senior Counsel for M/s.G.Mini
For Respondent in all W.Ps.	: Mr.J.K.Jayaseelan Government Advocate

COMMONORDER

By this common order, all these Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the following Assessment Orders passed by the respondent for the Assessment Years 2017-2018 to 2022-2023:-

Sl. No.	W.P.(MD) No.	Date of the impugned Assessment Order	Assessment Year
1	W.P.(MD) No.12426/2021	03.04.2024	2017-2018
2	W.P.(MD) No.12427/2021	04.04.2024	2018-2019
3	W.P.(MD) No.12428/2021	05.04.2024	2019-2020
4	W.P.(MD) No.12429/2021	08.04.2024	2020-2021
5	W.P.(MD) No.12430/2021	08.04.2024	2021-2022
6	W.P.(MD) No.12431/2021	08.04.2024	2022-2023

3. By the impugned Assessment Orders, the demand that was proposed in the respective Show Cause Notices that preceded the impugned Assessment Orders has been confirmed. The details of the Notices in Form GST DRC 01A, Show Cause Notices in Form GST DRC 01 and Personal Hearing Notices are given below:-

Sl. No	W.P. (MD) No.	Date of Notice in Form GST DRC 01A	Date of SCN in Form GST DRC 01	Date of Reply of the petitioner in Form GST DRC 06	Personal Hearing Notices
1	12426/21	03.04.2024	13.09.2023	12.10.2023 & 31.10.2023	16.12.2023 & 11.01.2024
2	12427/21	04.04.2024	10.10.2023	31.10.2023 & 22.01.2024	16.12.2023 & 11.01.2024
3	12428/21	05.04.2024	10.10.2023	31.10.2023 & 22.01.2024	16.12.2023 & 11.01.2024
4	12429/21	08.04.2024	13.10.2023	31.10.2023 & 22.01.2024	16.12.2023 & 11.01.2024
5	12430/21	08.04.2024	13.10.2023	31.10.2023 & 22.01.2024	16.12.2023 & 11.01.2024
6	12431/21	08.04.2024	13.10.2023	31.10.2023 & 22.01.2024	16.12.2023 & 11.01.2024

4. The petitioner, an airliner, is engaged in transportation of passengers and cargo through its flights. The petitioner has its principal place of business in New Delhi and has similar GST Registrations in most of the States including the State of Tamil Nadu. The petitioner has GST Registration in Trichy for Tamil Nadu. The Nodal Officer is in New Delhi.

5. The dispute in these cases arose out on account of collection of Passenger Services Fee (PSF) and User Development Fee (UDF) from the

passengers along with Ticketing Charges with GST which is paid to Airport Authority of India as a pure agent. That apart, there are certain disputes with regard to availing of input tax credit by the petitioner for discharging its tax liability under the respective GST enactments.

6. It is submitted that the petitioner is collecting the amounts towards Passenger Services Fee (PSF) and User Development Fee (UDF) from the passengers along with Ticketing Charges and is paying the same directly to the Airport Authority of India. It is submitted that the amount that are collected towards Passenger Services Fee (PSF) and User Development Fee (UDF) are not liable to tax in the hands of the petitioner and it is taxable in the hands of the Airport Authority of India in terms of Circular No.115/34/2019-GST [F.No.354/136/2019-TRU) dated 11.10.2019.

7. The case of the petitioner is that the Show Cause Notices that preceded the impugned order, did not mention any of the ingredients for invoking larger period of limitation under Section 74 of the respective GST enactments, 2017. That apart, it is submitted that the petitioner was not also issued with the Notices in Form GST ASMT-10.

8. The petitioner has replied to the respective Notices and has enclosed the copy of the invoices, based on which, the petitioner had availed input tax credit and sample copies of invoices raised by the Airport Authority of India on the amounts collected by the petitioner as its agent towards Passenger Services Fee (PSF) and User Development Fee (UDF) were produced. The learned counsel for the petitioner would submit that as far as the assessment year 2017-2018 which is subject matter of W.P.(MD) No.12426 of 2024 is concerned, the replies were uploaded along with the PDF copy. However, for the first time, in the order, it has been mentioned that the link was not accessible and therefore, the petitioner has not produced the documents.

9. It is submitted that the Notices that preceded the impugned Assessment Orders itself recorded that the petitioner has clarified the position despite the information being called for. The petitioner had requested for dispensing with the personal hearings and had furnished the information through email link in google drive. However, it was not accessible when it was attempted to be opened by the respondent. Under these circumstances, the impugned Assessment Orders have been passed confirming the demand.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

11. There are shortcomings on the part of the petitioner for not giving proper informations to the department in a readable form. This is evident from the notice issued to the petitioner for the respective periods in Form GST DRC 01 as detailed above. The petitioner compounded the case by not participating in the personal hearing and instead, gave certain informations through google drive link which was inaccessible or not readable and has thus suffered the impugned Assessment Orders.

12. *Prima facie*, the petitioner may not be liable to pay tax on such Passenger Services Fee (PSF) and User Development Fee (UDF) as the petitioner is requested to collect these amounts for the Airport Authority of India as its "agent". As such, these amounts cannot be taxed in the hand of the petitioner in the light of the Circular No.115/34/2019-GST [F.No.354/136/2019-TRU) dated 11.10.2019 issued by the Ministry of Finance, Department of Revenue, Tax Research Unit, Government of India, wherein, it has been clarified as follows:-

2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

> *(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
>
> *(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
>
> *(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

"Pure agent" has been defined to mean a person who-

> *(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
>
> *(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
>
> *(c) does not use for his own interest such goods or services so procured; and*

> *(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

2.8 Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

2.9 The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

13. The amount that are collected by the petitioner from the passengers through its General Sales Agents (GSAs) are taxable only in the hand of the Airport Authority of India. If any other separate charges were collected by the petitioner for acting as pure agent of Airport Authority of India, such service may be liable to tax in the hands of the petitioner under the provisions of the respective GST Acts and as per the Notifications issued by the Central Government under Section 9 of the respective GST Enactments. This would require a detailed consideration by the respondent.

14. If the petitioner has availed input tax credit on the service tax collected from the passengers towards Passenger Services Fee (PSF) and User Development Fee (UDF), the petitioner would be liable to reverse the same. This aspect also needs to be re-examined by the respondent.

15. Considering the fact that the issue is common for all the Assessment Years, and considering the fact that there is no clarity either

at the Show Cause Notice or in the respective impugned Assessment Orders, this Court is inclined to quash the respective impugned Assessment Orders and remit the case back to the respondent to pass fresh orders on merits.

16. The impugned Assessment Orders which stand quashed shall be treated as Addendum to the Show Cause Notices in DRC 01. For the sake of order, the Department may issue a consolidated Corrigendum after calling upon the petitioner to furnish the details and thereafter proceed to re-adjudicate the case.

17. The petitioner is directed to co-operate with the respondent by filing reply to the Show Cause Notices, Addendum and Corrigendum that may be issued. The petitioner shall furnish the documents to the respondent. All the issues are left open for the petitioner to canvass before the respondent. The petitioner is entitled to raise objections including its objection to invocation of extended period of limitation under Section 74 of the respective GST Enactments and other issue which pertains to availing of input tax credit and management consulting service.

18. It is expected that the entire exercise shall be completed by the respondent within a period of 12 months from the date of receipt of a copy of this order.

19. In the result, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.07.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

The State Tax Officer,
O/o.The Sales Tax Officer,
Ponmalai Assessment Circle,
Multistoried Building,
Kajamalai, Mannarpuram,
Trichy, Tamil Nadu - 626 117.

C.SARAVANAN, J.

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