CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos.40800 & 40801 of 2017

(Arising out of Order-in-Appeal No.710/2016 (STA-I) dated 28.12.2016 passed by Commissioner of Service Tax (Appeals-I), Chennai)

M/s. Orient Flight School .... **Appellant**
No.40, GST Road, St. Thomas Mount,
Chennai-600 016.

VERSUS

Commissioner of GST & Central Excise ... **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar. Chennai-600 040.

APPEARANCE :

Shri N. Viswanathan, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos.40937-40938/2026

DATE OF HEARING : 02.03.2026
DATE OF DECISION: 17.08.2026

Per: Shri Ajayan T.V.

Orient Flight School, the appellant herein, has assailed the Order-in-Appeal No.710/2016 (STA-I) dated 28.12.2016, whereby, the Appellate Authority has rejected the appeals of the appellant and upheld the common Order in Original No.01 &02/2015 dated 09.02.2015.

2. Brief facts are that the appellant is the aviation wing of the Hindustan Group of Institutions, Chennai. The appellant offers flight training to its students. Acting on intelligence that non-scheduled operators permitted by the DGCA were rendering the taxable service of "Supply of Tangible Goods" (SOTG) without complying with the provisions of the Finance

Act, 1994 (Act), the Department commenced verification of the appellant's operations. In the course of such verification, the Department also conducted verification of the operations of their related concern, Orient Flights Pvt. Ltd (OFPL). From the documents submitted, the Department noticed that DGCA has renewed permit for the Aircraft King Air C 90A. It was also noticed that OFPL are engaged in "Air Charting" and providing the Aircraft King Air C 90A to its customers. The appellant and OFPL were enquired as to whether there is any agreement between them pertaining to the utilization of the aircraft and also were requested to furnish copies of invoices and details of amounts received. The Department, upon scrutinizing the appellant's balance sheet for 2008-09, trial balance for 2009-10 and invoices, observed that the appellant had accounted receipt of amounts towards "charter flying" and "other collections". The Department formed the view that the appellant had supplied the said aircraft to OFPL without transferring possession and effective control thereof, and has thereby rendered SOTG service taxable under Section 65(105) (zzzzj) of the Act, without registration or payment of service tax as required under the Act.

3. On such allegations, Show Cause Notice (SCN) No. 58/2010 dated 06.10.2010 was issued to the appellant invoking the extended period of limitation under the proviso to Section 73(1) of the Act, demanding service tax for 2008-09 and 2009-10 with interest, and proposing penalties under Section 77 and 78 of the Act. This was followed by SCN No.9/2013 dated 04.09.2013, again invoking the extended period and demanding service tax for 2010-11, 2011-12 and 2012-13 (upto December 2012) on identical allegations.

4. The appellant contested both notices essentially on grounds that the dry-lease of the aircraft resulted in transfer of possession and effective control to OFPL, taking the transaction outside SOTG service and that confirmation of demand on the appellant duplicated the tax demand already proposed on the very same receipts in the hands of OFPL vide an earlier SCN No.19/2010 dated 24.05.2010. The notices were also contested on the grounds of limitation contending that none of the ingredients for invoking the proviso to Section 73(1) is actually present in the case. The Adjudicating Authority, however, by common Orders in Original No. 01 & 02/2015 dated 09.02.2015, rejected these

contentions, confirmed the demand of service tax of for the period 2008-09 to December 2012 together with applicable interest, imposed an equivalent penalty under Section 78 and a further penalty of Rs.10,000/- under Section 77 (1) (a) of the Act. In appeal, the Commissioner of Service Tax (Appeals-I), Chennai, by the impugned Order-in-Appeal No.710/2016 (STA-I) dated 28.12.2016, upheld the Orders-in Original in its entirety and rejected the appeals. Aggrieved, the appellant is before this Tribunal.

5. Shri. N. Viswanathan, Ld. Advocate appearing for the appellant made the following submissions:

a) The appellant merely conducts DGCA-approved pilot training and the aircraft was placed with OFPL under a dry-lease, i.e., delivered without crew;

b) Under the lease agreement dated 27.01.2008, OFPL was bound to a minimum guaranteed utilization of 50 hours a month at a fixed rent of Rs.2,00,000/-, and clause 5 cast on OFPL the obligation to redeliver the aircraft in the same condition and to bear the loss on any damage, which are features indicative of transfer of possession, risk and effective control to OFPL;

c) SCN No.19/2010 dated 24.05.2010 had already been issued to OFPL proposing service tax on its entire receipts, which included the very lease payments made by OFPL to the appellant. Therefore, confirming the demand again on the appellant on the same receipts amounts to double taxation;

d) Although a personal hearing was held on 14.12.2010 pursuant to the first notice, no order was passed thereon before the second notice, invoking the extended period once again, came to be issued;

e) The "other collections" reflected in the balance sheet for 2010-11 represent receipts from joy rides, sale of scrap and renewal of commercial pilot/instrument rating, unconnected with the lease rend, and were wrongly added to the taxable value;

f) The Appellate Authority erred in holding that clause 1 of the lease agreement did not satisfy condition (e) of the test laid down by the Supreme Court in Bharat Sanchar Nigam Ltd v. Union of India, and in doing so travelled beyond the findings of the Original Authority;

g) The benefit of the Board's clarificatory circulars on the possession and control test was wrongly denied for want of proof of actual payment of VAT, though the correct test is exigibility to VAT, not actual discharge thereof;

h) Delivery of the aircraft without crew resulted in transfer of possession and control to OFPL, taking the transaction outside the taxable entry;

i) Invocation of the extended period was untenable, and the Appellate Authority erred in not following the ratio of the Supreme Court in Nizam Sugar Factor v. Collector of Central Excise.

6. It was prayed that the impugned order be set aside and the appeal allowed. Though the decisions in ***Business Aviation Association for India v UOI, 2011 (24) STR 22 (Del), Commissioner of Service Tax-V, Mumbai v. UFO Moviez India Ltd, 2022 (61) GSTL 4 (SC), Express Engineers & Spares Pvt Ltd v. Commr of CGST, Ghaziabad, Universal Dredging & Reclamation Corpn Ltd v. Commr of CGST & C.Ex, Madurai, International Seaport Dredging Ltd v CST, Chennai, BSNL v UOI, 2006 (2) STR 161 (SC), Nizam Sugar Factory v CCE, A.P, (2006) 11 SCC 573, Blue Dart Aviation Ltd v CST, Chennai, 2012 (28) STR 386 (Tri-Chennai), Mesco Airlines Ltd v. CST, New Delhi, State of Andhra Pradesh v Rashtriya Ispat Nigam Ltd, 2013 (31) STR 513 (SC), and Confederation of India Industry v CCE & ST, Chandigarh I, (2024) 20 Centax 239 (Tri-Chan)***, were annexed to the written submissions, Ld. Counsel for the Appellant confined reliance at the Bar only to the decisions in ***BSNL v UOI, 2006 (2) STR 161 (SC), Nizam Sugar Factory v CCE, A.P, (2006) 11 SCC 573, and Confederation of India Industry v CCE & ST, Chandigarh I, (2024) 20 Centax 239 (Tri-Chan)***.

7. Shri. N. Satyanarayana, Ld. Authorised Representative appearing for the Respondent, reiterated and supported the findings of the Appellate Authority in the impugned order. It was urged that the fixed monthly rent payable irrespective of actual usage, the minimum guaranteed hours, and the obligation on OFPL to indemnify the appellant for damage were indicative of the appellant's continuing beneficial interest

in the aircraft; that the benefit of the possession and control circulars were rightly declined in the absence of proof of VAT payment; that non-registration and no disclosure of the lease receipt to the Department justified invocation of the extended period; and that penalties under Section 77 and 78 were correctly imposed as warranted.

8. We have heard the competing submissions and perused the appeal records as well as the case laws submitted.

9. On a consideration of the rival submissions, the following issues arise for our determination:
   i) Whether the arrangement between the appellant and OFPL under the agreement dated 27.01.2008 constitutes "Supply of Tangible Goods Service" under Section 65(105)(zzzzj) of the Act, or does it involve transfer of possession and effective control of the aircraft, taking it outside the ambit of that taxable entry;
   ii) Whether the amounts shown as "other collections" are includible in the taxable value;
   iii) Whether confirmation of demand on the appellant, when the identical receipts had already been made the subject matter of SCN No.19/2010 issued to OFPL, results in double taxation;
   iv) Whether invocation of the extended period of limitation under the proviso to Section 73(1) is sustainable; and
   v) Whether the penalties imposed under Section 77 and 78 of the Act are sustainable?

10. We proceed to address these issues. As to the first issue, we find that the taxable entry under Section 65(105) (zzzzj) covers supply of tangible goods for use where possession and effective control are not transferred. Where they are transferred, the transaction falls within "transfer of the right to use goods" under Article 366(29A)(d) of the Constitution, exigible to VAT and not to service tax. The five fold test laid down by the Hon'ble Apex Court in ***Bharat Sanchar Nigam Ltd v. Union of india, 2006 (2) STR 161 (SC)***, to constitute a transaction for the transfer of the right to use the goods, requires, inter-alia, that the goods be available for delivery, that there be consensus on their identity, that the transferee have a legal right to use the goods, that for the period during which the transferee has such legal right to use the goods, it should be to the exclusion of the transferor, and that the

transferor be precluded from transferring the same right to another during the currency of the transfer.

11. The lease agreement dated 27th day of January, 2008 and its terms are as under:

"LEASE AGREEMENT FOR HIRING OF AIR CRAFTS

This agreement of lease executed at Chennai on this the 27th day of January 2008 between M/S Orient Flight School a division of M/S Hindustan Engineering Training Centre a (Society registered under Tamil Nadu Societies Registration Act XXI/1860) having its registered office at No.40 G.S.T Road, St. Thomas Mount, Chennai -600 016 represented by its Asst. Finance Manager Mr. Sunoj Cheriyan duly authorized by a resolution passed in the Council Meeting, hereinafter referred to as the LESSOR of the first part, which term shall include unless repugnant in the context successors and assignees.

M/s. Orient Flights Private Limited a company registered under the Indian Companies Act 1956, and having its registered office at No 1/40 Mount Ponnamalle Road, Chennai -600 016 represented by Mr. K.V.V.K Balaji Senior Manager authorized by its Board of Directors, hereinafter referred to as the LESSEE as the party of second part, which term shall include, assignees, administrators, successors in interest, and legal representatives.

Whereas the Lessors are the absolute owners of Air Craft's namely "King Air" and "Piper Seneca" hereinafter referred to as Leased asset which are being used for Pilot/Engineers Training Programme run by Orient Flight School. And whereas to mitigate the cost of Maintaining the Air Crafts and put them to optimum use for enhancing the Financial strength of the school so as to impart better education, the Lessor have approved and agreed to lease the Aircrafts to such persons who have marketing strength and whereas the leases have good contacts which would be utilized to use the excess capacity of the Leased Assets and have thus agreed to take on lease the Leased Assets on lease for a period of 5 years. And whereas the terms and conditions mutually agreed to between the parties governing the lease arrangements are put to writing as under:-

1. The lease of the Leased Assets will be for a period of five years commencing from 27.01.2008 and the Lessee shall be entitled to use the Leased Assets for itself and/or its nominees/ clients as and when required during the period of the Lease. Whenever the Leased Assets is not in use for the Lease or its nominees the lessor shall be entitled to use them for the training programme undertaken by the school for its students.

2. The leased asset on Lease charges given to the Lessee is on a dry lease of Rs 80,000/- per flying hour inclusive of all taxes and running cost for King Air Aircraft

and Rs.40,000/- per flying hour inclusive of all taxes and running cost for Piper Seneca Aircraft. All expenses on the Leased Assets during the lease period will be borne by lessor.

3. The lessee shall utilize the Aircrafts together for a minimum 50 hours together in a month during the lease period. If the minimum hours is not used by the lessee, the lessee shall pay a minimum amount of Rs.2,00,000/-per month if the lease amount payable for the actual usage is less than Rs.2,00,000/-.

4. The Lessee shall pay the lease rent at the completion of financial year or at such intervals as may be agreed to.

5. The Lessee shall on expiry of every trip under the Lease shall deliver the aircraft in the same condition as it was delivered to them and in case of damage, the loss arising out of such damage, shall be reimbursed by lessee.

6. The lease agreement can be terminated on 30 days notice by either arties

in witness wherof the Lessors and the Lessee hereto have executed this Agreement on this the 27th day of January 2008 in the presence of the Witness mentioned below:

Witnessed by:

Sd/-
(T.SRINIVASAN)

Lessors
Sd/-
(SUNOJ CHERIYAN)

Lessee
Sd/-
(K.V.V.K.BALAJI)"

12. Applying the aforesaid test laid down in BSNL, it is seen that the clause "*whenever the leased assets is not in use for the lease or its nominees the lessor shall be entitled to use them for the training programme undertaken by the school for its students*", and the requirement that the lessee must "*on expiry of every trip under the lease shall deliver the Aircraft in the same condition as it was delivered to them*" means that the lessee does not have exclusive custody. Legal possession cannot constantly shift back and forth between parties based on hourly usage and the latter clause shows that the Aircraft is returned to the lessor's custody after each use. In a true lease, the asset remains with the lessee for the entire duration. While no doubt, the term "dry lease" has been used, which usually means without a crew, however, the

stipulation that the price includes "*running cost for the aircraft*" and "*all expenses on the leased asset during the lease period will be borne by the lessor*", indicates that the appellant as the lessor is paying for the operational costs, maintenance and upkeep and thus retain proprietary control over the asset. We are of the view that charging an amount per flying hour with a monthly minimum commitment resembles a commercial hiring or a service level agreement for the supply of the aircraft. Further a typical asset lease carries heavy termination penalties because control has shifted whereas in the instant case, it is seen that a simple 30 days' notice period is sufficient for either party to terminate the lease agreement, which gives it the character of an ongoing service agreement of supply of tangible goods. In sum, though the agreement uses terms like "lease" and "lessee", the actual operational clauses show that the lessor retains effective control and legal possession of the aircraft and it is not a transfer of right to use with possession and effective control. When the appellant as the lessor retains the right to use the aircraft when idle, maintains financial responsibility for all running costs and takes back physical delivery after individual trip, effective control and legal possession is never transferred to their related concern, Orient Flights Pvt. Ltd. Therefore, we are of the considered view that the activity of the appellant is rightly classifiable as "supply of tangible goods" and the finding in the impugned order cannot be faulted on this count.

13. As regards the second issue, we find that the SCNs proceeded solely on the allegation of "SOTG Service" in relation to the lease of the aircraft. The "other collections", stated to be the receipt from joy rides, sale of scrap, etc., were neither the subject of any allegation in the notices nor shown to bear any nexus with the lease transaction. It is settled, as held by the Supreme Court in Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., 2007(215) ELT 489 (SC), that an adjudicating authority cannot travel beyond the show cause notice, which constitutes the foundation of the proceedings. Inclusion of the 'other collections" in the taxable value, without any corresponding allegation in the notices is accordingly unsustainable and we hold that the demand on this count is liable to be set aside. The reliance placed by the appellant on the decision in ***Confederation of India Industry***

v CCE & ST, Chandigarh I, (2024) 20 Centax 239 (Tri-Chan) is apposite in this context.

14. Coming to the third issue, we find merits in the contentions of the appellant. Since the appellant's contention that lease receipts in question already formed part of the demand raised on OFPL under SCN No.19/2010 dated 24.05.2010, has remained uncontroverted, we are of the view that confirmation of tax on the same receipts in the hands of the appellant in these proceedings would result in double taxation of the same transaction, which the law does not countenance. Needless to say, our holding thus, so as to avoid duplication, is without prejudice to the Department's right, if any, to proceed strictly in accordance with law against the person ultimately found liable on these very receipts.

15. As regards the fourth issue on the invocation of the extended period of limitation, it is seen that the very transaction and receipts forming the basis of the demand on the appellant had already been within the Department's knowledge at the time of issuance of SCN No.19/2010 dated 24.05.2010 to OFPL, which concerned the identical lease payments. The second SCN No.9/2013 dated 04.09.2013 was, moreover, issued on the same set of facts as the first notice dated 06.10.2010, without any fresh act of suppression having been established for the subsequent period. The Hon'ble Supreme Court in ***Nizam Sugar Factory v. CCE, 2006 (197) ELT 465 (SC),*** following *P & B Pharmaceuticals (P) Ltd. v. CCE, 2003 (153) ELT 14*, has held that where facts constituting the alleged suppression were already within the knowledge of the Department at the time of an earlier SCN, the extended period cannot be invoked in a subsequent notice on the same or similar facts. Applying this ratio, no wilful suppression or intent to evade tax survives in the facts of this case. We also notice that there is no evidence of any positive act on the part of the appellant brought out in the show cause notices, that would qualify as the ingredients mandated, coupled with intent to evade payment of duty, essential for invocation of the extended period of limitation under the proviso to Section 73(1). Thus, we are of the firm view that the invocation of extended period of limitation in both the SCNs is unsustainable. Hence the demands, confined only to the normal period as applicable are liable to be upheld, and we do so.

16. Last, as we have already held that the ingredients of Section 78, fraud, collusion, wilful misstatement or suppression with intent to evade tax, also having not been established in these proceedings, the penalties imposed under Section 78 of the Act cannot be sustained. Given the facts and circumstances, we are of the view that the benefit of Section 80, as was prevalent during the relevant time, ought to be extended to the appellant and therefore penalty imposed under Section 77(1)(a) is also hereby set aside.

17. We have, for the sake of completion, scrutinised the decisions annexed by the Ld. Counsel to the written submissions, though all of them have not been relied upon at the Bar. In our considered opinion, the fact circumstances of these case laws, except those referred to in our order above, differ in material respects from the facts of this case. Proceeding to detail the individual distinctions would needlessly result in prolixity and would obfuscate the ratiocination given herein. Suffice to say, we have also noticed reliance on interim orders that have no precedential value and thus we find that none of the cited decisions dislodge the reasoning or the conclusions at which we have arrived.

18. In view of our analysis and for the foregoing reasons, the impugned Orders in Appeal No.710/2016 (STA-I) dated 28.12.2016 is modified to the extent stated above and the demands, confined only to the normal period as applicable, are hereby upheld. All penalties are set aside.

The appeals are partly allowed in the aforesaid terms.

(Order pronounced in the open court on 17.08.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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