IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20-08-2026

DATE OF DECISION : 28-08-2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 321 of 2019
and
CMP No. 26260 of 2019

The Managing Director
M/s Karnataka Commercial and
Industrial Corporation (P) Ltd.,
R.K.Terminus, II Floor
No.24, Bellary Road, Ganga Nagar
Bangalore 560 032

Appellant

Vs

1. Airport Director
   Airports Authority of India
   Chennai Airport, Chennai 600 027

2. N.Krishnamoorthy
   No.67/1 (New No.30/1), Indira Colony
   Ashok Nagar, Chennai 600 083

Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the order dated 17.07.2019 passed by the learned single Judge in O.P.No.73 of 2019.

For Appellant: Mr.I.Jaya Singh Manoharan

For Respondents: Mr.S.Venkatesan for R1
R-2/Arbitrator - No Appearance

JUDGMENT

P.Velmurugan J.

This original side appeal is directed against the order dated 17.07.2019 passed by the learned single Judge in O.P.No.73 of 2019.

2. Facts in brief leading to the filing of the present appeal are as follows:-

The appellant herein is a company registered with the Registrar of Companies at Bangalore doing various businesses including incidental services on transport sector such as management of airport entry tickets etc. The 1st respondent published a Notice Inviting Tenders (NIT) for award of license to manage the Airport Admission Tickets at Chennai Airport and the appellant herein became the successful bidder in the NIT. The license was awarded to the appellant on 21.03.2006 for a period of five years commencing from 01.02.2006 and the appellant furnished a Bank Guarantee for Rs.4.21,66,080/- towards Security Deposit for the due performance of the contract. One of the clauses in the license agreement states that the licensee shall pay all rates, assessments, outgoing and other taxes as leviable on the license, in law. Though Service Tax was introduced in India in the year 1994, it was not applicable to all the service but to those that were specifically notified by the appropriate government then and there. 'Airport Services' rendered by the Airports Authority of India was also brought under the ambit of Service Tax and so the 1st respondent was collecting Service Tax from the appellant and similarly placed other licensees on the License Fee payable as per the award of license. However, the appellant and other similarly placed licensees of the Airports Authority of India came to understand that the Central Board of Excise and Customs, the authority to levy and collect Service Tax, had by their Circular No.80/10/2004-S.T. dated 17.09.2004, clearly defined the term 'Airport Service', wherein they have specifically stated that Service Tax is not payable on Rental/License Fee payable to the Airports Authority of India for the premises rented/leased out to the respective licensees and the appellant and other licensees objected to the demand of Service Tax to be paid to the Airports Authority of India. But the 1st respondent compelled the appellant to pay the Service Tax and continued to raise debit notes against the appellant and shown all those amount as outstanding due from the appellant, resulting in the appellant filing W.P. No.39719 of 2006 before this Court and obtained an order of injunction dated 19.10.2006, restraining the 1st respondent from imposing or collecting service tax in any form from the appellant for management of airport admission ticket at Chennai International Airport pending disposal of the said writ petition. There were many such writ petitions filed by various licensees before various High Courts in the country and by an order of the Hon'ble Apex Court, all those writ petitions were transferred to the Hon'ble Delhi High Court and the Delhi High Court by its order dated 17.07.2012 ruled that service tax is not leviable on the services rendered by the writ petitioners till 01.06.2007 and quashed all the debit notes raised by the Airports Authority of India and also directed the Airports Authority of India to refund all the money retained by them to the writ petitioners including the appellant herein. However, the 1st respondent did not withdraw the debit notes and release the Bank Guarantee given by the appellant at the time of entering into the license agreement and retained it with them. Hence, the appellant invoked the arbitration clause and the 2nd respondent was appointed as the sole Arbitrator. The 2nd respondent, after proper adjudication, passed the award dated 20.07.2018, wherein the learned Arbitrator had declared that Service Tax is not payable by the appellant till 01.06.2007 and directed the 1st respondent to withdraw all the debit notes raised against the appellant towards payment of Service Tax till 01.06.2007 and to release the Bank Guarantee. The 1st respondent filed O.P.No.73 of 2019 before this Court under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the said award passed by the learned Arbitrator. The learned single Judge, by order dated 17.07.2019, allowed the original petition and set aside the award dated 20.07.2018 of the learned sole Arbitrator. Aggrieved thereby, the appellant has filed the present appeal.

3. The learned counsel appearing for the appellant would submit that the 1st respondent had filed the original petition under Section 34 of the Arbitration

and Conciliation Act, 1996 to set aside only a limited portion of the award dated 20.07.2018 of the 2nd respondent and had not challenged the entire award, as the learned Arbitrator had ruled that the Service Tax becomes payable only from 01.06.2007 as stipulated in Circular No.80/10/2004-S.T dated 17.09.2004 of the Central Board of Excise and Customs. The learned counsel would further submit that when all the cases pending in various High Courts including the one filed by the appellant herein, were transferred to the Delhi High Court and a Division Bench of the Delhi High Court by its order dated 17.07.2012 had ruled that the appellant and the other similarly placed licensees of the Airports Authority of India are not liable to pay Service Tax till 01.06.2007, as they were expressly excluded from the definition of 'Airport Services' in Circular No. 80/10/2004-ST dated 17.09.2004 of the Central Board of Excise and Customs, the impugned order has misinterpreted the decision of the Hon'ble Supreme Court in P.C.Paulose, M/s Sparkway Enterprises Vs Commissioner of Central Excise and Customs (CDJ 2011 SC 043) and applied the law laid down thereto to the present case, overlooking the fact that the liability to pay Service Tax in the case at hand were expressly excluded from the ambit of Service Tax by a specific notification of the appropriate government till 01.06.2007. Further, the ruling of the Hon'ble Supreme Court in P.C.Paulose case relates to the liability to pay Service Tax by an agent or authorised person for and on behalf of the principal, and the ruling of the Hon'ble Delhi High Court dated 17.07.2012 is about the non-liability due to the express exclusion of the service till a particular date on which it was brought into the fold of Service Tax liability. Even the 2nd respondent/Arbitrator had wrongly applied the ruling of P.C.Paulose case and wrongly rejected the claim of the appellant herein overlooking the Circular No.80/10/2004-ST dated 17.09.2004 of the Central Board of Excise and Customs, ignoring the fact that the issue adjudicated by the learned Arbitrator had two separate components for payment of Service Tax, one about the liability of the appellant herein to pay Service Tax and the other about the date from which the appellant herein is liable to pay Service Tax. Moreover, the appellant had been paying the Service Tax from 01.06.2007 without any protest and the challenge before the Delhi High Court was only for the period up to 01.06.2007, which is in accordance with the Circular No.80/10/2004-ST dated 17.09.2004 of the Central Board of Excise and Customs. Therefore, the impugned order is liable to be set aside. The learned counsel also relied upon the following judgments in support of his contentions:-

1. P.C.Paulose, M/s Sparkway Enterprises v. Commissioner of Central Excise & Customs, CDJ 2011 SC 043

2. Mahesh Sunney Enterprises Pvt. Ltd., v. Commissioner, Service Tax Commissionerate, New Delhi, CDJ 2014 DHC 629

3. Airport Retail Pvt.Ltd., v. Union of India and others in W.P.(C)No.4274 of 2010 dated 30.07.2014 passed by Division Bench of Delhi High Court

4. The learned counsel appearing for the 1st respondent would submit that the impugned order requires no interference, as the issue has been settled by the Hon'ble Supreme Court in P.C.Paulose case holding that once the Airports Authority has authorised an agent to perform any service liable to service tax, then the agent, having stepped into the shoes of the Airports Authority, has to bear the payment of service tax on behalf of the principal/AAI. The learned counsel would further contend that the Revenue has challenged the order passed by the Delhi High Court in appeal before the Hon'ble Supreme Court and the matter is sub judice.

5. We have considered the rival contentions and perused the materials available on record.

6. It is not in dispute that the appellant was awarded a contract by the 1st respondent/AAI to sell airport entry ticket at a pre-determined rate to the visitors entering the designated areas of the Chennai Airport for a period of five years commencing from 01.02.2006 to 31.01.2011. The License Agreement inter alia provided that the appellant was to give certain amount to the first respondent towards the anticipated revenue out of sale of entry tickets as a license fee, which shall be increased at 10% compounded every year; that a bank guarantee valid for 6 months beyond the contract expiry date for an

amount equal to six months license fee applicable for the fifth year; that the appellant shall also bear the rent for the cubicle allotted by the AAI for the sale of entry ticket as well as the water and electricity charges. While so, based on the orders passed by the Central Board of Customs & Excise in September 2004 amending the Finance Act so as to include the Airport Services within the ambit of payment of service tax, debit notes were raised by the first respondent against the appellant claiming the arrears of service tax that were paid by the first respondent to the Department, in terms of the clause provided in the license agreement. On the ground that the appellant is not liable to pay service tax till 01.06.2007, the appellant invoked the arbitration clause and raised the following claims before the second respondent Arbitrator:-

> (i) To declare that the appellant/claimant is not liable to pay any service tax on the license fee to the AAI as per license agreement dated 18.06.2007 and general conditions stipulated thereunder and the award letter dated 21.03.2006, and quash the illegal demands on account of the alleged service tax payable to the respondent.
>
> (ii) Release of bank guarantee executed towards security amounting to Rs.4,21,66,000/-.
>
> (iii) Quashing of all debit notes raised by the first respondent demanding service tax.
>
> (iv) Refund of Rs.33,17,218/- erroneously paid as service tax to the Department with interest at 18%.

7. The learned Arbitrator, upon consideration of claims (i) to (iii) as inter-linked and upon hearing the arguments of both sides, framed the following

issues for adjudication:-

(i) Whether service tax payable as per Government Rules and Regulations is required to be paid by the respondent or by the claimant who has been authorised by the respondent to carry out such service liable for payment of service tax?

(ii) Whether the service tax is applicable (payable) at all, for the service being rendered by the claimant on behalf of the respondent?

(iii) The Trade usages applicable to the transaction u/s 28(3) of A&C 1996.

The learned Arbitrator, in the light of the ratio laid down by the Hon'ble Supreme Court in the case of P.C.Paulose, M/s Sparkway Enterprises v. Commissioner of Central Excise & Customs, CDJ 2011 SC 043, ultimately rejected the claim (i) of the appellant to declare that the claimant is not liable to pay service tax on the license fee or reimburse payment to the respondent, but allowed the claims (ii) & (iii) following the judgment of the Delhi High Court dated 17.07.2012 and the absence of any amendment to the circular dated 17.09.2024 issued by the Central Board of Excise & Customs, holding that service tax could not be levied prior to 01.06.2007, especially when there was no stay granted by the Hon'ble Supreme Court in the appeal filed by the Department. The learned Arbitrator also rejected the claim (iv) of the appellant, as the payment was made by the claimant directly to the Department, which is not a party to the arbitration. Aggrieved thereby, the first respondent filed the original petition under Section 34 of the Arbitration and Conciliation Act and the learned single Judge set aside the award of the learned Arbitrator and allowed the petition holding that the learned Arbitrator cannot interpret the decision of the Hon'ble Supreme Court, which is a binding precedent. Hence the present appeal.

8. There is no dispute regarding the factual aspects and equally the power of this Court, while exercising jurisdiction under Sections 34 and 37 of the Arbitration and Conciliation Act, is very limited to re-appreciate the evidence. In the case on hand, so far as the liability of the appellant to pay service tax is concerned, the issue has already been dealt with by the Hon'ble Supreme Court in P.C.Paulose, M/s Sparkway Enterprises v. Commissioner of Central Excise & Customs, CDJ 2011 SC 043, holding as follows:-

> "12. We have already set out the issue which falls for our consideration in the present appeal. In our opinion as to whether or not the appellant is a service provider and, therefore, liable to pay the service tax rest on the interpretation of the aforementioned circular and also the aforesaid provisions which are already referred to hereinbefore.
>
> 13. The licence agreement clearly stipulates that AAI is entitled in law to grant licence at its Calicut Airport for the purpose of airport admission so as to provide amenities and facilities to passengers and visitors at the Airport and that the licensee, i.e., appellant, has agreed under the licence

agreement to render such services to AAI on the terms and conditions mentioned in the said licence agreement. One of such stipulations was that the licensee would pay all rates, assessment, out goings and other taxes as leviable on the licensee in laws.

14. Another responsibility that vested on the licensee was to maintain regular and proper account books along with other supporting documents regarding sales effected by the licensee in the said premises which could be inspected by AAI in such manner as may be prescribed. The licensee was also responsible under the licence agreement to operate the subject facility by charging the rate from users, as may be approved in advance by AAI.

15. Albeit, it is true that the appellant deposits a licence fees of Rs.2,66,797/- per month to AAI but it collects the required fees from the users of the facility and provide all facilities to such customers. Section 65 Clause 105(zzm) of Finance Act, 1994 defines `taxable service' to mean any person, by airports authority or any person authorised by it, in an airport or a civil enclave. It is thus crystal clear that the appellant being a person authorized by AAI to provide service in express terms and conditions, it becomes liable to pay such tax as it was an authorized person to provide taxable service and collect the admission ticket charges on a contract basis.

16. Under the terms and conditions set out hereinbefore of the agreement the appellant is authorized to provide all the

services as mentioned therein and, therefore, as per the statutory definition the appellant steps into the shoes of AAI for the service provided on the basis of the authorization and becomes liable to pay such taxes in terms of the operation of Section 65 Clause 105 (zzm) of the Finance Act, 1994.

17. Consequently, we find no merit in this appeal and the same is dismissed without any order as to costs."

9. In the aforesaid judgment, the Hon'ble Supreme Court considered the scope of Clause 105 (zzm) of Section 65 of Finance Act, 1994, which states that 'taxable service' means any service provided to any person, by Airport Authority or any person authorized by it, in an Airport or a Civil Enclave and the circular dated 17.09.2024 issued by the Central Board of Excise and Customs by way of clarification on the scope of service tax on airport services by making it clear that services provided in an airport or civil enclave to any person by AAI or by a person authorized by it or any other person having charge of management of an Airport are taxable under the aforesaid category. In the said case, the collection of admission ticket charges was for the period from 10.09.2004 to 31.03.2005.

10. In the case on hand, the main thrust of argument advanced by the learned counsel for appellant, relying upon clause 5 of the circular dated

17.09.2024, which was considered by the Division Bench of Delhi High Court, is that when a part of airport/civil enclave premises is rented/leased out, the rental/lease charges would not be subjected to service tax, as the activity of letting out premises is not rendering a service. In this context, para 5 of the circular is relevant, which reads as under:-

> "5. Airport services: Services provided in an airport or civil enclave, to any person by Airports Authority of India (AAI), a person authorized by it, or any other person having charge of management of an airport are taxable under this category. This includes variety of services provided to airlines, as well as for cargo and passenger handling such as security, transit facilities, landing charges, terminal navigation charges, parking and housing charges and route navigation facility charges. It would be on the gross amount chargeable by AAI or other such authorized person. Thus, charges such as royalty, license fees etc. collected by AAI from other service providers at the airport such as ground handling, security, common user terminal services etc. are chargeable to service tax. **However, in case a part of airport/civil enclave premises is rented/ leased out, the rental/lease charges would not be subjected to service tax, as the activity of letting out premises is not rendering a service.**" (emphasis supplied)

11. Therefore, the learned Arbitrator, considering the judgment passed by the Division Bench of the Delhi High Court quashing the demand on the ground that the levy of service tax on rental/license fee collected by AAI from the

appellant cannot be made and also the terms of the contract and trade usages applicable to the transaction that the service tax payable on the entry ticket is neither shown separately nor any clarification that the service tax is included in the entry fee printed even in the ticket issued till 31.5.2015, passed the award dated 20.07.2018 and allowed the claims (ii) & (iii) and directed the release of bank guarantee and withdrawal of all debit notes demanding service tax from the appellant, noting that there was no stay granted by the Hon'ble Supreme Court against the operation of the judgment of the Delhi High Court and no amendment was also issued to the circular dated 17.09.2004 enlarging the scope of applicability of service tax on license fee collected by AAI.

12. When the above award was put to challenge by the first respondent under Section 34 of the Arbitration and Conciliation Act, the power of this Court is very limited to interfere with an award by re-appreciating the evidence. Though the learned single Judge has set aside the award on the ground that the learned Arbitrator is bound by the binding precedent and therefore the award is in violation of the fundamental policy of Indian law, considering the facts and circumstances, we hold that the appellant is liable to pay service tax as an authorised person for and on behalf of the principal AAI with effect from 01.06.2007, in view of the amendment brought to Section 65(105) by including

clause (zzzz) introducing "renting immovable properties" as a taxable service. So far as the period prior to 01.06.2007 is concerned, the appellant is armed with the judgment of the Division Bench of the Delhi High Court dated 17.07.2012 ruling that the scope of levy of service tax as per the circular dated 17.09.2004 does not include levy of service tax on rental/license fee collected by AAI. Moreover, the judgment of the Delhi High Court has not been stayed by the Hon'ble Supreme Court and the matter is sub judice.

13. In the light of the above, the order of the learned single Judge is modified to the extent that the appellant is liable to pay service tax with effect from 01.06.2007, which has been admittedly paid by the appellant without any protest, this original side appeal stands disposed of. Needless to state that the parties can workout their remedy, after the outcome of the appeal before the Hon'ble Apex Court, in the manner known to law. Consequently, the connected CMP is closed. There shall be no order as to costs.

(P.VELMURUGAN J.) **(GK.MUTHUKUMAAR J.)**
28-08-2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

ss

To

1. The Airport Director
   Airports Authority of India
   Chennai Airport, Chennai 600 027

2. The Sub Assistant Registrar (O.S.)
   High Court, Madras

P.VELMURUGAN J.
AND
GK.MUTHUKUMAAR J.

SS

Pre-delivery Judgment
in OSA No.321 of 2019

28-08-2026