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Union of India Vs Fleming Duty Free Shop Private Limited

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Court : Chennai

Decided On : Apr-29-2025

Judge : Honourable the Chief Justice,Honourable Mr Justice Mohammed Shaffiq

Appeal No. : WA/674/2023

Appellant : Union of India

Respondent : Fleming Duty Free Shop Private Limited

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2025

PRONOUNCED ON: 29.04.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE AND THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ and C.M.P. No.6753 of 2023 Union of India, Represented by the Secretary, Ministry of Finance, North Block, New Delhi 1 10 001. .. Appellant -vs- 1.Flemingo Duty Free Shop Private Limited, Represented by its Authorized signatory, R.Murali, Duty Free shop at Chennai International Airport, Chennai, Having

registered office at No.D73/1,TTC, Industrial Area, Turbhe, MIDC, Navi, Mumbai 400 705. 2.State of Tamil Nadu, Represented by the Secretary, Finance, Finance Department Secretariat, Chennai. 3.Airports Authority of India, Represented by its Chairman, Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi 1 10 003.

4.Airport Director, Chennai International Airport, Chennai 600 027. .. Respondents Prayer: Appeal filed under Clause 15 of the Letters Patent to set aside the

order of the Learned Judge made in W.P.No.4055 of 2018 dated

30.03.2021 which is so far as against the appellants and allow the writ appeal. For Appellant : Mr.A.P.Srinivas Senior Standing Counsel For Respondents : Mr.V.Sridharan Senior Counsel for Mr.S.Muthu Venkataraman (for R1) Ms.Amrita Dinakaran Government Advocate (for R2) Dr.Fr.A.Xavier Arul Raj Senior Counsel for M/s.A.Arulmary (For R3 and R4)

JUDGMENT

(Judgment of the Court was delivered by Mohammed Shaffiq, J.) The present writ appeal is filed by Union of India challenging the

order of the learned single judge insofar as the following directions viz.,

a) To refund the Goods and Service Tax paid for the period 01.01.2018 to 30.06.2018; b) Not to collect GST for the period July 2019 to March 2021 on the premise that the collection would be followed by a refund and thus the entire exercise is revenue neutral.

2. In this judgment, parties are referred to in the same ranking as

in the writ petition. Petitioner viz., Flemingo Duty Free Shop Private Limited, is a company incorporated under Companies Act, 1956. Petitioner is stated to be the first private entity in India to be engaged in the business of operation and management of Duty Free Shops (hereinafter referred to as DFS), which sell and/or deal in duty free goods at airports and seaports in India. 2.1. Respondent No.3 Airport authority of India is a Public Sector Enterprise and responsible for operation, management and maintenance of airports in India. Airports in Chennai is operated, managed and maintained by 3rd respondent directly or through 4th respondent, i.e., Airport Director, Chennai International Airport. 2.2. Petitioner entered into a concession agreement with 3rd respondent for operation of DFS at Chennai International Airport. Petitioner was issued a Special Bonded Warehouse License under Section 58A of the Customs Act, 1962, by the Commissioner of Customs for storage of Duty Free Goods. Petitioner has been running DFS since 2016 and sells perfumes, alcohol, confectionery, cosmetics etc. These products are procured by petitioner from foreign suppliers for sale at DFS inside the airport. These are first kept in customs bonded warehouses and later transferred to DFS for sale. In terms of the concession

agreement petitioner paid minimum guarantee/revenue share to respondent No.3 and 4, at both arrival and departure outlets. 2.3. Writ petitions were filed challenging the levy of CGST/SGST on the minimum guarantee/revenue share on DFS operated by petitioner in the arrival and departure terminals. The challenge was on the premise that they are beyond the customs frontiers of India and outside the territory of India and the supplies were Zero Rate in terms of Section 16 of Integrated Goods and Services Tax Act(hereinafter referred to as IGST Act). Respondent No.3 issued to petitioner an invoice inclusive of GST for the month of October 2017. Petitioner informed 3rd and 4th respondent that levy of GST was without authority of law. Nevertheless, petitioner paid taxes charged for the month of October 2017 under protest while

reserving its right to claim refund of amount collected under CGST/SGST. Respondent No.3 continued to issue monthly invoices including CGST and SGST for the months of November and December 2017. 2.4.Aggrieved, petitioner preferred a writ petition before High Court of Judicature Madras,Madurai Bench in W.P.(MD)No.2129 of

2018. The Madurai Bench of this Court vide order dated 16.02.2018, granted an injunction restraining 3rd and 4th respondent from collecting Goods and Service Tax on supply of services to petitioner in relation to

DFS arrival and departure outlets and finally disposed of the writ petition with the following direction : a) In as much as the petitioner would be entitled to refund of ITC on the GST paid by them, I am of the view that no purpose will be served by asking the petitioner to pay GST and thereafter claim refund. Therefore, for the period prior to 28.02.2021, the petitioner need not pay any GST to the fourth respondent. b)Since the fourth has paid GST for the period from 01.01.2018 to 31.03.2018, even though the petitioner has not paid, the first respondent has to refund to the fourth respondent. c) The petitioner has to pay GST on the concession fee to the fourth respondent and thereafter claim refund as per Section 54 of the CGST Act with effect from 01.03.2021. 2.5. The writ petition W.P.No.4055 of 2018 filed on the premise that 3rd and 4th respondents are charging and insisting on payment of CGST/SGST on the minimum guarantee/revenue share by calling it License fees for exclusive Concession to Develop, Operate and Maintain Duty Free Shops at both the arrival and departure of Chennai International Airport. When the writ petition was heard by the learned judge the following period wise break up was noticed: Period Remark July 2017 to December Petitioner compelled to pay tax and thereafter 2017 claim refund under Section 54 of the GST Act read with Section 16 of IGST Act. (Refund granted.) 01.01.2018 to Respondent No.3 and 4 proceeded to discharge 31.07.2019 GST liability of Rs.18.68 crores, though same was not collected from the petitioner. July 2019 to till date Stay granted

by Madurai Bench of this Court and thus Respondent No.3 and 4 has neither collected

Period Remark GST nor remitted the same. 2.6. Importantly, the learned single judge records that the petitioner during the course of hearing had agreed to discharge the Goods and Service Tax from April 2021 and thereafter claim refund in terms of Section 16 of IGST Act read with Section 54 of the CGST/SGST Acts. With regard to the period 01.01.2018 to 31.06.2019 the 3rd and 4th respondent having paid taxes without even passing it on to petitioner inasmuch as above supply would constitute zero rate sale, request was made that taxes so remitted may be refunded to 3rd and 4th respondent. While for the period July 2019 till 30.03.2021 when the taxes were not collected in view of operation of interim order of stay, it was submitted that levy of tax would in any case be followed by refund in terms of Section 54 of CGST/SGST Act read with Section 16 of IGST Act, thus the entire exercise is revenue neutral. 2.7. Though grounds were raised challenging the treatment of impugned supplies as zero rate supplies, to a pointed question as to whether the revenue would persist contesting the supplies being zero rate , the learned counsel for revenue would concede that the supplies in question are in fact zero rate. In view thereof, we do not find/deem it necessary to examine the above question.

2.8. The order of the Learned Judge directing refund on the ground that exercise of payment of taxes followed by refund is a revenue neutral exercise, is however challenged. The challenge is on the limited premise that revenue neutrality cannot be a reason to act contrary to the provisions which mandates payment of taxes followed by claim for refund, even where the supply is Zero Rate in terms of Section 16 of IGST Act. 2.9. Having said that the finding of the Learned Judge, particularly for the period prior to 01.04.2021, that the entire exercise is Revenue neutral is not seriously disputed by the revenue/Union, we see no reason to interfere with the order of the Learned Judge. The Apex

Court on more than one occasion held that no appeal need be preferred where the tax effect is revenue neutral. The following decisions are relevant:

(i) Commissioner of Income Tax, Central, Kanpur v. J.K. Charitable

Trust, Kamal Tower, Kanpur1 :: 14. ... Similarly, where the effect of the decision is revenue neutral there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure. The above was reiterated by Supreme Court in the case of Commissioner of Income Tax v. Citi Bank.2 1 . (2009) 1 SCC 196

2. (2024) 469 ITR 410

(ii) Commissioner of Central Excise & Customs, Vadodara v.

Narmada Chemathur Pharmaceuticals Ltd.3: 1. ..... It is stated by the learned counsel appearing on behalf of the assessee that the excie duty paid and MODVAT credit availed of were identical. Therefore the consequences of payment of excise duty after availing of MODVAT credit was revenue neutral. The appeals are accordingly dismissed.

2.10. We may, however, clarify the authorities are at liberty to examine as to whether the tax effect is in fact revenue neutral for the period prior 01.04.2021 or there is any loss of revenue. If authorities find the exercise to be not revenue neutral, it is open to the authorities to proceed in accordance with law. We say no more in that regard. 2.11. We also make it clear that the direction of the learned judge that the petitioner has to pay GST on the concession fee to the fourth respondent and thereafter claim refund as per Section 54 of the CGST Act with effect from 01.03.2021 is not challenged by petitioner and remains undisturbed. 2.12. Refund application stated to be filed by 3rd respondent shall be processed and finalized within a period of four weeks along with applicable interest in accordance with law.

3. In view thereof, the writ appeal stands disposed of on the above 3.(2005) 10 SCC 123 terms. No costs. Consequently, connected miscellaneous petition is closed.

(K.R.SHRIRAM, CJ.) (MOHAMMED SHAFFIQ, J.) 29.04.2025 Index : Yes/No Neutral Citation : Yes/No spp To 1.State of Tamil Nadu, Represented by the Secretary, Finance, Finance Department Secretariat, Chennai. 2.Airports Authority of India, Represented by its Chairman, Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi 1 10 003. 3.Airport Director, Chennai International Airport, Chennai 600 027. `

The Hon'ble Chief Justice and

Mohammed Shaffiq, J.

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