



# Supreme Court Decision on Levy of Service Tax on Airport User Development Fee

*By Ashutosh Mahajan\**

1. Recently, Hon'ble Supreme Court of India (SC), in a case, Central GST v. Delhi International Airport Ltd. [2023] 152 taxmann.com 324, has held that service tax was not chargeable on User Development Fee (UDF) collected by airport developer from passengers at the airport.
2. SC held so for the following reasons:
  - a) UDF is a statutory levy as was held earlier in the case of Consumer Online Foundation v. Union of India, 2011 (5) SCR 911. The fact that the amount is not deposited in Government treasury, per se, does not make it less statutory levy. Even if such levy is discretionary in the sense that it may not be necessarily levied always, does not make it less statutory.
  - b) Collection of UDF is not premised on rendering of any service. These are not charges or any other consideration for services for the facilities provided by the Airport Authority.
  - c) The amounts collected are deposited in an escrow account, not within the control of the assessee.
  - d) Airport management has evolved; it is no longer the monopoly of the Government; private participation is recognised. This sector is now regulated through a new regulator i.e., Airport Economic Regulatory Authority of India. As a part of the Union's economic policies, the upgradation and renovation of airports are funded through UDF, which is a statutory levy. The utilization of funds is monitored and regulated by law, giving it a character of public funds.
  - e) Circular issued by CBEC, Circular No. 89/7/2006-ST dated 18-12-2006 wherein it was clarified that collection of amounts by way of taxes, sovereign or statutory dues would not be subjected to service tax levy.
3. The issue of UDF having settled under the erstwhile service tax law, further question, which naturally arises, in this case is whether UDF would be chargeable to GST?
4. Ministry of Finance, in its Circular No. 115/34/2019 – GST, dated 11 October 2019, has clarified that UDF is charged by airport operators for providing the services to passengers and therefore, UDF is liable to GST. The airline is not responsible for payment of GST on UDF provided it satisfies the conditions prescribed for a pure agent under rule 33 of CGST rules. It is the licensee, that is airport operators (like AAI, DIAL, MIAL etc.) which are liable to pay GST on UDF.
5. Given the judgement of SC (supra) on non-chargeability of service tax on UDF, we are of the view that UDF would not be liable to GST for the same reasons as mentioned in the

above SC judgment. It has already been held by SC that UDF is a statutory levy or a compulsory extraction. It is not a consideration against rendering of any service. Though GST law defines 'Service' to mean anything other than goods, however, GST is levied on all types of supply which are, (i) made for a consideration, and (ii) are for the purpose of furtherance of business. Only activities specified in Schedule I of the CGST Act, if made or agreed to be made without consideration, would still be liable to GST. Collection of statutory levy is not one such activity which would be liable to GST even without consideration.

6. It remains to be seen whether the Government would finally accept the above judgement of Supreme Court on levy of service tax on UDF and not take any action to nullify its effect under GST law. It would serve the purpose of business and cause of development, that they do accept it and revise their circular closing this debate on levy of GST on UDF in favour of the taxpayer.

*\*Ashutosh Mahajan is the Managing Partner at TeamLogic LLP and views are personal.*