CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. III

SERVICE TAX APPEAL NO. 50240 OF 2020

[Arising out of the Order-in-Original No. 01-02/KAM/PC/CGST/DSC/2019-20 dated 16/05/2019 passed by The Principal Commissioner of Goods & Service Tax, Delhi South Commissionerate, New Delhi.]

M/s Delmos Aviation Private Limited **……Appellant**
209, Prakashdeep Building, Tolstoy Marg,
New Delhi – 110 001.

Versus

The Principal Commissioner of Central Goods & Service Tax, Delhi South Commissionerate, **….Respondent**
Plot 2-B, 3rd Floor, E.L.L. Annexe, Bhikaji Cama Place,
New Delhi – 110 066.

APPEARANCE:
Shri A.K. Batra, Chartered Accountant for the appellant.
Shri Aejaz Ahmad, Authorized Representative for the Department

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50010/2026

DATE OF HEARING : 06.08.2025
DATE OF DECISION: 06.01.2026

P.V. SUBBA RAO

M/s. Delmos Aviation Pvt. Ltd.[1] filed this appeal to assail the order dated 16.5.2019[2] passed by the Commissioner deciding the proposals made in the show cause notice dated 21.10.2015[3] covering the period 2010-2011 to 2014-2015 and in the show cause notice dated 12.4. 2018[4] covering the period 2015-2016 to 2017-18 and confirmed demands of service tax with interest and penalties. The details are as follows:

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1. **the appellant**
2. **impugned order**
3. **SCN I**
4. **SCN II**

In the matter of	**M/s Delmos Aviation Pvt. Ltd. (appellant)** 209, Prakashdeep Building, Tolstoy Marg, New Delhi – 110 001					
Show Cause Notice	SCN	Date	Period		Demand (Rs.)	
	I	20.10.2015	2010-11 to 2014-15		31,75,79,992/-	
	II	12.04.2018	2015-16 to 2017-18 (up to June 2017)		13,55,63,617/-	
	Total 45,31,43,609/-					
Order-in-Original (Impugned order)	No. 01-02/KAM/PC/CGST/DSC/2019-20 dated 16.05.2019					
Demand confirmed	SCN	Tax (in Rs.)	Interest	Penalty (in Rs.)		
			U/s 75 of the Act	**76**	**77**	**78**
	I	28,10,64,386/-		-	10000	28,26,64,078/-
	II	11,84,59,318/-		1,18,45,931	10000	--
	Total	39,95,23,704/-		1,18,45,931	20000	28,26,64,078/-
Taxable category of services	Business Auxiliary Service 165 (105) (zzb) read with section 65 (19) of the Act up to 30.06.2012 Section 65B (44) of the Finance Act 1994 read with section 66B of the Finance Act 1994 read with Rule 9 of Place of Provision of Services Rules, 2012					
STC No.	AABCD 9009JST 001					

2. The undisputed facts of the case are that Aeroflot, a Russian airlines in the business of transporting passengers and cargo by air, appointed the appellant as it's sole selling agent in India, Nepal, Bangladesh and Sri Lanka for export of cargo and entered into a General Sales and Service Agent (GSSA) agreement. Some part of this agreement is placed at pages 87 to 92 of the appeal. In this agreement Aeroflot is referred to as the Principal and the appellant as GSSA. The purpose of this agreement and the functions of the appellant are indicated as follows:

> *"2. PURPOSE OF THE AGREEMENT*
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> *The purpose of the present agreement is the sale of air cargo transportation on the services of Aeroflot by GSSA in accordance with Aeroflot rules and regulations, the sale of air cargo transportation on behalf of Aeroflot on the services of other Air carriers, representation of Aeroflot before*

government, courts of Law, tribunals, to act on behalf of Aeroflot in accordance with written instructions of the Principal.

7. FUNCTIONS OF GSSA

The GSSA shall perform the following functions on behalf of the Principal:

7.1 Selling air cargo transportation on the services of the Principal and on his behalf on the services of other Air Carriers in accordance with Principal's rules and regulations and documentation and written instructions provided by the Principal.

7.2 Supervising other Agents (Forwarders), Associates and other customers in the territory and to settle accounts with those Agents (Forwarders), Associates and other customers in connection in the sales of air cargo transportation on the routes within the network of the Principal and in connection with sales of ar cargo transportation sold on behalf of the Principal on the services of other Air Carriers with issuance of traffic and accounting documents of the Principal (such as Airway bills)

….."

3. Although the agreement required the appellant to be an agent and sell service of transportation of goods by Aeroflot, the actual business took place differently. Had the appellant acted as an agent of Aeroflot, it should have received a commission for it's services and Aeroflot should have issued invoices to exporters for

the service of transporting goods. Aeroflot only paid an amount of US$ 1 per Airway bill to the appellant for it's services on which the appellant paid service tax which is not in dispute.

4. For export of cargo, the appellant invoiced the exporters and received consideration for the service. The appellant charged the exporters a single consolidated amount based on the nature of goods, destination, volume, size, the cost of transporting the goods from the exporter’s location to Delhi or Goa from where Aeroflot operated it’s aircrafts, incidental expenses such as loading and unloading of cargo, repair of tampered cargo, etc. Thus, what the appellant received from the exporter was a single amount covering all costs including and upto the place of destination.

5. Aeroflot invoiced the appellant for transportation of cargo and the appellant paid Aeroflot for transporting the goods from Delhi or Goa to the destination.

6. There was thus, a no *lis* between the exporter and Aeroflot. The appellant issued a single Airway Bill to the exporter from the domestic airport from where the goods were shipped to Delhi or Goa and further up to the final destination. All costs of domestic transportation of goods were borne by the appellant. The appellant and the exporters dealt with on Principal to Principal basis. The appellant neither served as an agent of the exporter nor served as an agent of Aeroflot. The amounts charged by the appellant from the exporter included the cost of transportation

paid to Aeroflot, cost of domestic transportation by air or road and other incidentals such as loading and unloading of cargo.

7. The appellant treated the service which it rendered as 'Transportation of Goods by Air' service as defined in section 65 (105) (zzn) which was exempted from service tax by Notification no. 29/2005-ST dated 15.7.2005 up to 1.7.2012. According to the appellant, this service was also not taxable after 1.7.2012 when all services which are not in the negative list (and not 'taxable services') became taxable because, as per Rule 10 of the Place of Provision of Service Rules, 2012[5], *the place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.* Since the destination in all the transactions was outside India, the appellant's case is that no service tax was payable and hence none was paid.

8. The allegation in the SCNs and the decision in the impugned order is that the appellant had rendered before 1.7.2012 'Business Auxiliary Services' chargeable to service tax under section 65 (105) (zzb) (iv) of the Act to the exporters and received a consideration which is chargeable to service tax. After 1.7.2012, the service rendered by the appellant was not under negative list and hence was taxable and as per Rule 9 of the POPS Rules, the place of provision of this service was the location

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5. POPS Rules

of the service provider which is in India. Therefore, service tax had to be paid even after 1.7.2012.

Submissions of the appellant

9. Shri A K Batra, learned Chartered Accountant for the appellant made the following submissions:

(i) The appellant is a private limited company registered under the Companies Act and is engaged in providing various services including courier agency service, cargo handling, business auxiliary services, air travel agent services, renting of immovable property service, etc.

(ii) The appellant had entered into an agreement with Aeroflot called the GSSA as it's sole selling agent and it received a consideration of US$1 per airway bill from Aeroflot on which it paid service tax as recorded in paragraph 19.1 of the impugned order.

(iii) On receiving any enquiry from the customers, the appellant verified the flight and cargo space availability with Aeroflot and then gave a quotation to the customer including the total cost up to the place of destination.

(iv) The price included the consideration which the appellant paid to Aeroflot for the international transportation, cost of domestic transportation by air or road and other incidental expenses such as loading and unloading.

(v) Since Aeroflot operated only from Delhi and Goa, the appellant had arranged with other airlines for the domestic transportation by air and also for road transportation wherever required.

(vi) The appellant issued Airway bills to the exporters covering the entire transport including the domestic leg. Their relationship was on Principal to Principal basis.

(vii) The department erred in classifying the appellant's services for the period upto 1.7.2012 as Business Auxiliary Services when in fact, they were transportation of goods by air services under Section 65 (105) (zzn) of the Act.

(viii) The appellant availed the services of Aeroflot and other domestic airlines to deliver its own services to the customers. It did not act as an agent of either the airline or of the customer.

(ix) Buying and selling space on ships or aircrafts on one's own account is an act of trade and is not rendering of any service. Reliance is placed on **Greenwich Meridian Logistics (India) Pvt. Ltd. vs Commissioner of Service tax, Mumbai[6].** This decision of the Tribunal was upheld by Bombay High Court and further appeal to Supreme Court by the Revenue was dismissed by the Supreme Court on account of unexplained delay of 1,180 days.

(x) Business Auxiliary Services involve third party involvement and in the disputed transactions there was no third party.

(xi) The services of transportation of goods by air were exempted by notification no. 39/2005-ST dated 15.7.2005.

(xii) The department declined to accept the appellant's services as 'transportation of goods by air' for the reason that the appellant neither owned nor operated any aircraft. The term 'aircraft operator' under section 65 (3b) of the Act nowhere requires the service provider to either own or to operate any aircraft. This clause reads as follows:

"Aircraft operator" means any person who provides the service of transport of goods or passengers by aircraft.

(xiii) For the period after 1.7.2012, the department has wrongly treated the appellant as an intermediary and applying Rule 9 of the POPS Rules, held that the appellant's place of business was the place of provision of service applying Rule 9.

(xiv) Since the appellant was not an intermediary but had dealings both with the customers and with Aeroflot on Principal to Principal basis, it is not covered by Rule 9.

(xv) The service which the appellant had rendered to the customers was transportation of goods by air and for this service, as per Rule 10 of the POPS Rules, the destination is the place of provision of service. Since

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6. 2015 (4) TMI 547- CESTAT Mumbai

the destination was outside India, the appellant was not liable to pay service tax at all.

(xvi) Even if the matter is decided against the appellant on merits, extended period of limitation could not have been invoked as the appellant was registered with the service tax department and was filing returns and the department was fully aware of its activities. Therefore, the period April 2010 to September 2013 was clearly barred by limitation.

(xvii) The appeal may be allowed and the impugned order may be set aside.

Submissions of the Revenue

10. Shri Aejaz Ahmed, learned authorized representative of the Revenue vehemently supported the impugned order and submitted as follows:

(i) For the period up to 30.6.2012, the Agreement with Aeroflot clearly indicates that the appellant was appointed as General Sales & Service Agent (GSSA) and it also undertook various activities on behalf of Aeroflot.

(ii) The actual transportation of the goods was not being done by the appellant at all but was being done by Aeroflot. Nothing in the GSSA shows that the transportation of goods was delegated by Aeroflot to the appellant.

(iii) Therefore, neither the appellant owned or leased or operated any aircraft nor was it delegated the job of operating Aeroflot's aircraft. Therefore, the question of the appellant's services being 'Transport of Goods by Air" service does not arise at all.

(iv) The services rendered by the appellant squarely fall under the category of Business Auxiliary Services as defined under clause (iv) of section 65 (19) of the Act which were not exempted under notification no. 9/2005-ST dated 15.7.2015.

(v) After 1.7.2012, the appellant continued to act as an intermediary between Aeroflot and the exporters and hence the place of provision of this service was, as per Rule 9 of POPS Rules, the place of the appellant which is in India.

(vi) Therefore, service tax was correctly payable and has been demanded in the impugned order.

(vii) The impugned order may be upheld and the appeal may be dismissed.

Findings

11. We have considered the submissions advanced by learned counsel for the appellant and learned authorized representative for the Revenue and perused the records. The fundamental question to be decided is the nature of the services rendered by the appellant and who the service recipients were.

12. The GSSA signed between Aeroflot and the appellant clearly states that the appellant was being appointed as the sole selling agent for Aeroflot. If that be the case, the appellant should have been selling the space on the aircrafts on behalf of Aeroflot to exporters. The exporters should be billed by Aeroflot and the *lis* should have been between Aeroflot and the exporters and for it's services, the appellant should have received consideration (commission) from Aeroflot.

13. The actual business happened differently and it is this dichotomy between the Agreement and the actual business which lies at the root of the present dispute. Instead of selling space on behalf of Aeroflot, the appellant offered to the exporters a complete end-to-end package transporting from the exporter's place up to the final destination and invoiced the exporters a consolidated amount for this service. This involved not only using Aeroflot's services to transport from Delhi or Goa to the final

destination but also transport of goods by road or Air through domestic airlines upto, say, Delhi Airport. It also involved some handling, loading and unloading activities. The appellant completed these activities using other airlines or other service providers. There was no lis between the exporter and these domestic airlines or other service providers or Aeroflot.

14. The Airway Bill, which is equivalent of the Bill of Lading (for transport by ship) and which is a document of title and an acknowledgement of receipt of goods, was issued by the appellant covering the entire journey including the international leg undertaken through Aeroflot. Thus, the service offered by the appellant to the exporters is a complete package.

15. The consideration paid by the exporters was also for the complete package. In turn, the appellant paid Aeroflot and others for their services.

16. Thus, instead of acting as an agent of either Aeroflot or of the exporter, the appellant entered into Principal to Principal agreements with the exporters and with Aeroflot, domestic airlines and other service providers.

17. A few examples will make the position clear and remove all doubts about the nature of transaction. If A buys a sack of rice from B and sells it to C there will be two transactions of sale- from B to A and from A to C. On the other hand, if A connects B and C as an agent, B sells the rice to C directly and A only

receives commission for his services from B and/or C. Neither the rice nor the money will belong to A at any point of time. He only acts as an agent of his principal.

18. There are agents who act on behalf of one and there are those who act on behalf of both. A stock broker, for instance, acts on behalf of the seller or buyer. The stock brokers interact among themselves and the stocks are transferred from seller to the buyer and the cost of the stocks is transferred from the buyer to the seller. The buyer's agent receives commission from the buyer and the seller's agent receives commission from the seller. On the other hand, real estate agents dealing with rental properties often deal with both the landlord and the tenant and receive some commission from each.

19. The next question we need to answer is if the appellant's services can be considered as having been rendered to the exporters on principal to principal basis when the international leg of the transport which is the main component took place through Aeroflot and when the GSSA clearly indicates that the appellant is appointed as an agent of Aeroflot? We find that the charge of the service tax is on the service rendered and not on the agreements signed although the agreements are very helpful in understanding the nature of the transaction. Even if there was no agreement at all, but the service was rendered and a consideration was received, service tax has to be paid. Conversely, if there is clear agreement but no services were

rendered, no service tax needs to be paid. In a case such as this where the services were rendered differently from what was contemplated in the agreement, the actual services rendered must be considered regardless of what was agreed to.

Classification of the service before 1.7.2012

20. According to the Revenue, the service rendered by the appellant to the exporters was 'Business Auxiliary Service' as defined under section 65 (19) of the Act and chargeable to tax under section 65(105) (zzb) of the Act. According to the appellant, it was 'transportation of goods by air' service under section 65 (105)(zzn) of the Act. The relevant sections are reproduced below:

> **Section 65. Definitions –** In this Chapter, unless the context otherwise requires, --
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> ***
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> **(3b)"aircraft operator" means any person which provides the service of transport of goods or passengers by aircraft;**
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> ****
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> **(19)"business auxiliary service" means any service in relation to**,
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> (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
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> ******

(iv) procurement of goods or services, which are inputs for the client;

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;

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(105)"**taxable service**" means any service provided or to be provided,-

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(zzb) to a client, by any person in relation to business auxiliary service;

(zzn) to any person, by air craft operator, in relation to transport of goods by aircraft;

21. According to the Revenue, the appellant rendered Business Auxiliary services to its clients (the exporters) by procuring services for its clients. If the appellant had procured the services, they must have been procured from someone else, say, Aeroflot or other operators. If that be the case, the provider of the service would be Aeroflot and the recipient would be the exporter who would pay Aeroflot for its service. The appellant, as an agent would get a service charge for its services of procuring the service. The responsibility for transporting the goods would have been that of Aeroflot and the Airway bill would have been issued by Aeroflot to the exporter. This would have been consistent with the GSSA entered into between the appellant and Aeroflot. However, the actual transactions, as discussed above, took place

differently. The appellant undertook transportation of the goods up to the destination, issued Airway bills to the exporters and collected a consolidated amount for the service. In turn, it used the services of Aeroflot, domestic airlines and other service providers and paid them for their services.

22. Clearly, these were not the transactions where the appellant procured any services for the exporters but rendered the services on its account and for the purpose used the services of other service providers. The service was not clearly a Business Auxiliary Service as defined in section 65 (19), clause (iv) and therefore, it was not exigible to service tax as per section 65 (105) (zzb).

23. The appellant's contention was that it was rendering service under section 65(105) (zzn) being service rendered **'to any person, by aircraft operator transport of goods by aircraft'** and this service is exempted by Notification no. 29/2005-ST dated 15.7.2005. The case of the Revenue is that the appellant neither owned nor leased nor operated any aircrafts and hence cannot be covered by this clause at all and hence the appellant is not entitled to the exemption.

24. We find in the first place, if the appellant is not covered under section 65 (105) (zzn), the appellant will not be rendering a taxable service at all and if so, the eligibility of exemption or otherwise is irrelevant. Secondly, we find that the term 'aircraft operator' must be interpreted as per the statutory definition in

section 65 (105) (3b) insofar as it pertains to this Act according to which "aircraft operator" means any person which provides the service of transport of goods or passengers by aircraft. Nothing in this definition requires one to either own or lease or run an aircraft. So long as one provides the service of transport of goods or passengers by aircraft, one is covered by the definition of 'aircraft operator'. The appellant provided the service of transporting goods of the exporters by air using the services of Aeroflot, domestic airlines, etc. and hence is squarely covered by the term aircraft operator and is covered by the charging section 65 (105) (zzn) of the Act which service, undisputedly was exempt by notification no. 29/2005-ST dated 15.7.2005.

Taxability of service after 1.7.2012

25. The undisputed legal position is that after 1.7.2012, all services except those in the negative list were exigible to service tax. It is not the case of either side in this appeal that the services in question were in the negative list.

26. The only question to be answered is where the service has been provided since as per section 64, the Finance Act applies to the whole of India and if the service is provided outside India, it will not be in the taxable territory and hence no service tax can be charged. **Section 66C** empowered the Central Government to make Rules for such determination. This section reads as under:

> **66C.Determination of place of provision of service-** (1) The Central Government may, having regard to the nature

and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

27. The POPS Rules were framed by the Government under the above section. These become significant because at times the service provider and service recipients could be in different places and the service could have been rendered in different places (say in transporting goods from India to a destination outside India or vice versa).

28. The case of the Revenue is that the appellant acted as an intermediary and as per Rule 9 of POPS Rules, the appellant's place of business, which is in Delhi should be considered as the place of provision of service and since it is in India, service tax must be charged.

29. The case of the appellant is that it did not provide any intermediary service but provided the service of transportation of goods by air, which, as per Rule 10 of the POPS Rules, is deemed to have been rendered at the place of destination.

30. The easiest way to examine the nature of the service is to ask 'what did the service recipient pay the service provider for'?

It is the consideration that is received which is exigible to service tax. The appellant offered to it's clients, the exporters, a package deal of transporting their goods from their places upto the destination and charged a consolidated sum for this service. It did not offer to act as an intermediary between the exporter and Aeroflot or any other service provider for a service. In a contract of such nature, the intermediary's responsibility would be confined to linking the two parties for a consideration for such service. The actual service would be rendered by the airline who would bill the exporter for its service of transportation. Clearly, the appellant had not rendered 'intermediary service' to it's clients. It provided the service of transporting the goods by air to the destination. As per Rule 10 of the POPS service, the place of provision of service is the destination outside India. Therefore, no service tax is payable on the service as the provisions of the Act extend only to the whole of India and not beyond.

31. In view of the above, the impugned order confirming the demand of service tax with interest and imposing penalties cannot be sustained. The impugned order is accordingly set aside and the appeal is allowed.

(Order pronounced in open court on 06/01/2026.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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