

EY Tax Alert

CESTAT classifies charter of aircraft as air transport of passenger service

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Executive summary

This Tax Alert summarizes a recent ruling of Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (CESTAT)¹. The issue involved was whether aircraft charter is classifiable as air transport of passenger service or supply of tangible goods service.

CESTAT observed that:

- ▶ The taxpayer is registered with Directorate General of Civil Aviation (DGCA) as an aircraft operator. A service can be classified as transport of passenger by air service in cases where such service is provided by an aircraft operator.
- ▶ Rule 3(9) of the Aircraft Rules, 1937 defines "air transport service" as paid service of transporting people or goods by air, whether by a single flight or a series of flights.
- ▶ The Civil Aviation Requirements (CAR) also provides a similar definition of 'Air transport service' both for scheduled and non-scheduled services.
- ▶ As per CAR, carriage of passengers by a non-scheduled operator's permit holder may be performed on per seat basis or by way of chartering the whole aircraft on per flight basis, or both. A non-scheduled operator can run revenue charter flights for its group companies provided it is for remuneration.
- ▶ Charter operation is a sub-category of non-scheduled aircraft operations. Such operations do not cease to be aircraft operations only because the entire aircraft is chartered from the aircraft operator. Thus, the activity cannot be categorized as supply of aircraft by the operator to the charterer.
- ▶ In case of charter operation, no ticket is required to be sold to the individual passenger. The charter may be for single journey or for multiple journeys over a period of time.

Accordingly, CESTAT held that the service is classifiable under air transport of passenger service.

¹ 2024-VIL-237-CESTAT-AHM-ST

Background

- ▶ Taxpayer was engaged in providing chartered aircrafts to various organizations and was classifying its service under the category of air transport of passenger service as per section 65(105) (zzzo) of Finance Act, 1994.
- ▶ As per Revenue, the service was covered under the supply of tangible goods services as per section 65(105)(zzzzj) of Finance Act, 1994.
- ▶ Revenue issued show cause notice raising service tax demand. Later, order was passed confirming the demand along with interest.
- ▶ Aggrieved, the taxpayer filed an appeal before Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

Taxpayer's contentions

- ▶ Directorate General of Civil Aviation (DGCA) have granted permit for non-scheduled passenger air transport service.
- ▶ Larger bench of this Tribunal in their own case² had held that the taxpayer is an aircraft operator holding the requisite permit from DGCA and that charter flight operations undertaken by it is air transport service under the category of non-scheduled passenger service.

Further, the Larger Bench has categorically held that the manner or mode of fixing the remuneration for such air transport service, whether seat wise, daily or weekly or annual basis is entirely irrelevant and does not detract from the service being air transport service.

- ▶ The aircraft is used to provide the service of transportation of passengers. There is no supply of the aircrafts and hence Section 65(105)(zzzzj) has no application.

Tribunal's ruling

- ▶ The taxpayer is registered with the DGCA as an aircraft operator for providing the service of transport of passengers by aircraft.

For a service to be taxable under the category of 'air transport of passengers service', such service should be provided by an aircraft operator.

Aircraft operator means any person who provides the service of transport of goods or passenger by aircraft in relation to scheduled or non-scheduled air transport service provided to any passenger embarking in India for domestic journey or international journey.

- ▶ Air transport service is defined in Rule 3(9) of the Aircraft Rules, 1937 as a service for the transport

by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights.

- ▶ Civil Aviation Requirements (CAR) dated 1 June 2010 also provides a similar definition for Air transport service both for Scheduled and Non-Scheduled services.
- ▶ CAR defines charter operation as an operation for hire and reward in which the departure time, departure location and arrival locations are specially negotiated with the customer or the customers representative for entire aircraft. No ticket is sold to individual passenger for such operation.

- ▶ Further CAR provides that:

- ▶ The carriage of passengers by a non-scheduled operator's permit holder may be performed on per seat basis or by way of chartering the whole aircraft on per flight basis, or both. There is no bar on the same aircraft being used for either purpose as per the requirement of customers from time to time.

- ▶ A non-scheduled operator can run revenue charter flights for its group, subsidiary, or associated companies, including its employees, board members, and their families, provided it operated for remuneration, whether as a single or series of flights over any time period.

- ▶ Charter operation is a sub-category of non-scheduled aircraft operations. Such operations do not cease to be aircraft operations by reason of the fact that the entire aircraft is chartered by the client from the aircraft operator.

Charter operations are essentially aircraft operations and cannot be categorized as supply of aircraft by the aircraft operator to the charterer.

- ▶ Since the cost of operation of aircraft such as maintenance, cost of the crew, fuel expenses, etc. are borne by the taxpayers and the remuneration received is on the basis of flying hours, trips, per seats, the activity cannot be treated as supply of tangible goods.
- ▶ The services rendered fall within the category of non-scheduled air transport services.
- ▶ Accordingly, CESTAT held that the service is covered under the taxable service category of transport of passengers by air.

² 2022(8)TMI -720 -CESTAT Ahmedabad (LB)

Comments

- a. This ruling may also have a bearing under GST regime since rate of tax and place of supply differs for both the service categories under GST.
- b. In the past, Revenue had denied input tax credit on charter services on the ground that credit is not available on aircraft rental services. Hence, the decision is likely to have a positive impact on the credit eligibility in the hands of recipient.

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