F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit
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Room No. 146G, North Block,
New Delhi, the 11th October 2019

To,

The Principal Chief Commissioners/ Chief Commissioners (All)/
The Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on issue of GST on Airport levies – reg.

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in the succeeding paras.

2. Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers. User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.

2.1 Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

2.2 Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For

this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

2.3 The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

2.4 Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

2.6 PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.

2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

"Pure agent" has been defined to mean a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; (c) does not use for

his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

2.8 Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

2.9 The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

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2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

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