

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Cross Application No. 57 of 2012

(On behalf of Respondent)

In

Service Tax Appeal No. 94 of 2012

(Arising out of Order-in-Original No. 20-23/ST-II/WLH/2011 dated 30.11.2011 passed by the Commissioner of Service Tax, Mumbai-II.)

M/s. The Bombay Flying Club

.....Appellant

**Juhu Areodrome, Juhu,
Vile Parle, Mumbai – 400 056**

VERSUS

Commissioner of Service Tax, Mumbai-II

.....Respondent

**4th Floor, New Central Excise Building,
Maharshi Karve Road,
Churchgate, Mumbai – 400 020**

WITH

Service Tax Appeal No. 86583 of 2018

(Arising out of Order-in-Appeal No. Na/GST A-III/MUM/354/17-18 dated 15.01.2018 passed by the Commissioner of GST & Central Excise (Appeals-III), Mumbai.)

M/s. Bombay Flying Club

.....Appellant

**Juhu Airport, S.V. Road, Juhu,
Vile Parle, Mumbai – 400 058**

VERSUS

**Commissioner of CGST &
Central Excise, Mumbai South**

.....Respondent

**13th Floor, Air India Building,
Nariman Point, Mumbai – 400 021**

APPERANCE:

Shri Yogesh S. Patki, Advocate for the Appellant

Shri Adeeb Pathan, Dy. Commissioner, Authorised Representative for the Respondent

AND

Service Tax Appeal No. 87403 of 2018

(Arising out of Order-in-Appeal No. Na/GST A-III/MUM/354/17-18 dated 15.01.2018 passed by the Commissioner of GST & Central Excise (Appeals-III), Mumbai.)

**Commissioner of CGST &
Central Excise, Mumbai West**
Mahavir Jain Vidyalaya,
C.D. Burfiwala lane, Andheri (West)
Mumbai – 400 058

.....Appellant

VERSUS

M/s. The Bombay Flying Club
18, Juhu Areodrome,
Santacruz, Mumbai – 400 049

.....Respondent

APPERANCE:

Shri Adeeb Pathan, Dy. Commissioner, Authorised Representative for the
Appellant

Shri Yogesh S. Patki, Advocate for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85441-85443/2025

Date of Hearing: 18.12.2024
Date of Decision: 20.03.2025

PER: DR. SUVENDU KUMAR PATI

The above two appeals of Assessee-Appellant M/s. Bombay Flying Club and the Departmental appeal filed by Commissioner of CGST & Central Excise, Mumbai West on behalf of Revenue-Department as well as cross objection filed by it were all heard together on 18.12.2024 and taken up for a common order.

2. Assessee-Appellant M/s. The Bombay Flying Club imparts training in Aircraft Maintenance Engineering and it also undertakes maintenance and repair of aircrafts owned by members of the club, which was registered as a non-profitable organisation. Respondent-

Department viewed its activity undertaken between October, 2003 and September, 2008 as "Commercial Coaching and Training Services" as well as "Management, Maintenance and Repair services" respectively. Accordingly Service Tax demand of ₹1,05,73,964/- was made through show-cause notice dated 20.04.2008 by holding the said training as commercial training and coaching services taxable in terms of Section 65(105)(zzc) of the Finance Act, 1994 read with Clause 26 of Section 65 of the said Act and also for services of "maintenance or repair" classifiable under Section 65(64) of the said Act by invoking extended period with proposal for interest and equal penalty. Periodic show-cause notices were also issued to the Appellant for October, 2008 to March, 2009 demanding Service Tax of ₹33,88,916/- , for financial year 2009-10 with Service Tax demand of ₹58,80,527/- and for financial year 2010-11 with Service Tax demand of ₹57,62,275/-. Learned Commissioner of GST & Central Excise (Appeals-III), Mumbai disposed of these four demands made *vide* show-cause notice as referred above and subsequent notices dated 20.04.2008, 22.04.2010, 05.10.2010 and 03.10.2011 respectively by one common order on dated 30.11.2011 confirming demand of Service Tax of ₹2,34,98,044/- (total of all 4 demands) under commercial training and coaching and ₹21,07,638/- for management, maintenance and repair services under Section 73 of the Finance Act, 1994 with interest as provided under Section 75 of the said Act and penalty of ₹2,56,05,682/-. Assessee-Appellant is before us in Service Tax appeal No. 94/2012 assailing legality of the said order while its cross objection No. ST/Cross/57/2012 filed by the Department is in the nature of written submission seeking confirmation of the Order-in-Original

passed by the Commissioner without any specific prayer made seeking any other relief.

3. Similarly for subsequent period for financial year 2011-12 demand on those two services allegedly rendered by the Assessee-Appellant was made on dated 22.10.2012 through show-cause notice but the then Adjudicating Authority *vide* his order dated January 06, 2014 had dropped both the demands of ₹37,35,378/- on commercial training and coaching services and on maintenance and repair services for ₹4,24,442/- that was challenged by the Respondent-Department before the Commissioner (Appeals) who ultimately allowed part relief to the department on January 15, 2018 *vide* his Order-in-Appeal No. Na/GST A-III/MUM/354/17-18 in holding the demand against commercial training and coaching services as not payable while setting aside the dropping of demand on maintenance and repair services. Assessee-Appellant is before us challenging legality of the confirmed demand on maintenance and repair services in appeal No. ST/86583/2018 while Respondent-Department has filed an appeal No. ST/87403/2018 against dropping of demand on commercial training and coaching services.

4. In the memorandum of appeal and during course of hearing of the appeal learned Counsel for the Appellant Mr Yogesh Patil submitted that the issue is no more *res integra* after Hon'ble Delhi High Court, in the case of *Indian Institute of Aircraft Engineering Vs. Union of India [2013 (30) STR 689 (Del.)]*, has given its finding on the issue that aircraft maintenance engineering training is a course approved by the "Director General of Civil Aviation" (DGCA) and trainings imparted by

such institutes do not fall within the ambit of “commercial coaching or training”; for which no taxable service is held to be provided. He informed that Appellant was providing ‘proof of competency’ certificate as provided under Rule, 41 of the Aircraft Rules, 1937 which was a rule framed under Section 5 of the Aircraft Act, 1934 that authorised the Central Government to make such Rules. He further informed that Rule, 133B of the Aircraft Rule, 1937 deals with approved organisation i.e. organisation approved by DGCA and Training Schools and Organisations of Appellant’s category are covered under the said Rule, for which Appellant’s case is covered within the definition of Section 65(27) of the Finance Act, 1994 that reads as hereunder:

“(27) “Commercial training or coaching centre” means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes [“but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;” {omitted by the Finance Act, 2011 (8 of 2011), dated 08.04.2011.}]”

5. Learned Counsel for the Assesee-Appellant further contented that as Appellant was issuing certificate which was recognised by law namely by the Aircraft Rule, 1937 no Service Tax was to be payable for imparting such training. In respect of CBEC Circular bearing No. F. No. 137/132/2010-ST dated 11.05.2011 regarding leviability of Service Tax on Flying Training Schools and Aircraft Maintenance

Engineering Institutes, in which it had considered the training imparted by such institution as not a course recognised by law, learned Counsel for the Appellant submitted that the said Circular was taken into consideration by Hon'ble Delhi High Court in the case of Indian Institute of Aircraft Engineering, *cited supra* to give a finding that Service Tax is not leviable in such training provided for aircraft maintenance by recognised institute for which order passed by the Commissioner confirming the demand on training is to be set aside, also in view of the fact that Department's appeal before the Hon'ble Supreme Court was dismissed as withdrawn resulting in attainment of finality of the order passed by the Hon'ble Delhi High Court.

6. Learned Counsel for the Assessee-Appellant further argued extensively on the legality of Service Tax confirmed on 'management, repair and maintenance' services undertaken by the Assessee-Appellant which was only providing such service to its club members and charging cost of such maintenance on no-profit basis. He had contended that even if the argument led by Department that no express contract exist for providing such service was available, in view of clear findings of Hon'ble Supreme Court given in the case of *Calcutta Club Ltd. (Respondent) reported in (2019) 19 Supreme Court Cases 107* that "Doctrine of mutuality" commands that there can't be any sale or service transaction between a Club and its members, would squarely apply to the Appellant's case, since one can't provide service to himself and therefore, a club being association of members can't provide any service to its members and that to without a service charge being collected for the said purpose.

7. *Per contra* learned Authorised Representative Mr. Adeeb Pathan for the Respondent-Department in appeals filed by the Assessee and also as Appellant in the other appeal filed against dropping of demand on 'commercial training and coaching' submitted that aircraft maintenance engineering license is issued by DGCA after conducting necessary examination for which Assessee-Appellant M/s. Bombay Flying Club can be stated to have been issuing certificates only in respect of a particular Batch completing training, duly approved by DGCA which can not be treated as certificate issued is recognized by law since the same only enables individual candidate to obtain requisite licence from DGCA and therefore, the order passed by learned Commissioner (Appeals) in dropping the demand for the subsequent period for 2011-12 is unsustainable in law. He further submitted that Appellant having registered under Companies Act is also liable to pay Service Tax on "maintenance and repair" charges received by it, for which the appeal filed by Assessee-Appellant M/s. Bombay Flying Club is required to be set aside. He summed up his submission in saying that only because Revenue-Department had withdrawn its appeal on monetary ground against the order passed by Hon'ble Delhi High Court in Indian Institution of Aircraft Engineering judgment that resulted in vacation of stay, it can't be said that the principle set by Hon'ble High Court has attained finality, since issues was not determined by the Hon'ble Supreme Court on merit.

8. We have taken note of the submissions, perused the case record, relevant provision of law as well as relied upon judgments cited by the adversaries. Before we begin to analyse the issue, it is required

to be placed on record that w.e.f. 01.07.2003 commercial training/coaching services were brought under the Service Tax net by way of insertion of Clause (105)(zzc) in the Finance Act, 1994 and *vide* Section 65(27), pre-school coaching and training centre or any institute or establishment which issues any kind of certificate or diploma or degree concerning educational qualification 'recognized by law' for the time being in force was excluded from the meaning of Commercial Training or Coaching Centre. This provision 65(27) was amended w.e.f. 01.05.2011 so as to remove the exclusion clause provided for pre-school coaching and training centres or any institutes issuing educational qualification certificates 'recognized by law' but similarly exemption was granted to them *vide* Notification No. 33/2011-ST dated 25.04.2011 w.e.f. 01.05.2011. CBEC *vide* its letter bearing No. F. No. 137/132/2010-ST dated 11.05.2011 had issued clarification on application of Service Tax on flying training school and aircraft maintenance engineering institute making Service Tax leviable as the certificate issued by them was not 'recognized by law'. Service Tax demand for the financial year 2011-12 on these two services was made primarily on the basis of this circular.

9. As could be noticed, the findings of the learned Commissioner in respect of training on repair and maintenance of Air Crafts for the period upto 2010 was same as has been referred by learned Authorised Representative that the certificate issued by Assessee-Appellant was only course completion certificate and respective candidates have to qualify in the examination conducted by the DGCA to obtain flying licence. Apart from what has been argued by learned

Counsel for the Appellant, the said observation is not based on facts for the reason that Department of Civil aviation, Government of India had specifically issued a letter on dated 19.05.2011 (copy at page 109 of appeal memo) to the Member, Board of Service Tax CBEC, Department of Revenue, in which he has clearly explained that Flying Training and Aircraft Maintenance Engineering Institutes are approved institute of the DGCA who were imparting training as per Rule, 133B of the Aircraft Rules, 1937 and were issuing certificates that was considered by DGCA for issue of respective licences since such training is mandatory without successful completion of which no candidate can obtain Pilot licence or maintenance engineering certificate, as the case may be. This aspect has been disputed by the Department and concurred by the order of Adjudicating Authority while disposing of first four show-cause notices on the ground that those certificates can't be considered as 'recognized by law' since were not alone sufficient to award a degree or diploma as 'recognized by law' and therefore, the same certificate, since can't grant any engagement directly to the Candidates/Trainees, it can't be considered as vocational or educational training certificate. Infact this aspect has been considered by Hon'ble Bombay High Court and the finding rendered by it is noted in para 27 of their order which is reproduced hereunder for better clarity.

"27. The reasoning in the impugned Instruction dated 11th May, 2011 that because the qualification awarded by the Institute does not culminate in automatic issuance of license/authorization by the DGCA to certify the repair, maintenance or airworthiness of an aircraft and for which purpose a

further examination to be conducted by the DGCA is to be taken, in our view mixes up and confuses, 'qualification' with 'a license to practice on the basis of that qualification'. An educational qualification recognized by law will not cease to be recognised by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken. Immediate instance can be given of the qualification in the field of law. Though by amendment of the recent years, the right to practice law on the basis of the said qualification has been made subject to clearing/passing a Bar Exam to be held by the Bar Council of India, the same does not make the qualification of law not recognized by law. The recognition accorded by the Act, Rules and CAR supra to the Course Completion Certificate issued by the Institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance or airworthiness of an aircraft and for which authorization a further examination to be conducted by the DGCA has to be passed/cleared."

From the above observation, it can very well be said that clear cut distinction is made out between acquirement of qualification to be declared eligible in completing certain course and the requirement of issue of licence to practice on the basis of the said qualification to enable a person to take up the profession accordingly. On the basis of said finding of the Hon'ble Delhi High Court that has struck down the said clarification Circular of the CBEC issued on dated 11.05.2011, and this Tribunal has rendered consistent decisions on the issue which

is also referred in the written submission filed by learned Counsel for the Appellant, as noted below, we are of the considered view that judicial precedent as set by Hon'ble Delhi High Court and by this Tribunal with several decisions as passed in the case of *Hindustan Institute of Aeronautics* reported in 2014 (36) STR 703, *Madhya Pradesh Flying Club*, Final order No. 52250/2017 dated 03.03.2017, *Star Aviation Academy* reported in 2018 (15) GSTL 342 and also by Hon'ble Allahabad High Court in the case of *Garg Aviations Ltd.* reported in 2014 (35) STR 689 on the issue has to be followed by parallel or subordinate judicial forums. We accordingly are of the view that the certificate issued by Appellant can be treated as certificate 'issued in accordance to law' so as to cover it under exception clause of imparting commercial and educational training. The portion of statute regarding issue of certificate that was deleted from Section 65(27) with effect from 01/05/2011 was brought into force by way of its introduction through Notification No. 33/2011-ST, that covers the period of the order passed by the Commissioner (Appeals), also would meet the same result.

10. Now coming to the tax liability that is fastened on maintenance and repairing of aircrafts by the Appellant company, as could be seen from the documents available on record, no separate charge except repairing cost in the name of 'overhauling charges' was collected for those repairing and maintenance services and the said services were rendered only to the members of M/s. Bombay Flying Club, which is Appellant in the present case and therefore, the Appellant stands in the same footing as that of *Calcutta Club Ltd. (Respondent)* cited *supra*

in which 'doctrine of mutuality' issue was settled by the Hon'ble Supreme Court as reported in *2019 (19) Supreme Court Cases 107*. Important factual aspect in the present case also strengthen the Appellant's contention that it is not liable to pay Service Tax on repairing and maintenance of the aircraft owned by its members as no consideration amount for such service (except cost component) was received by it. Hence the order.

THE ORDER

11. The two appeals filed by Assessee-Appellant bearing Service Tax Appeal No. 94 of 2018 & Service Tax Appeal No. 86583 of 2018 are allowed and the order passed by the Commissioner of Service Tax, Mumbai-II *vide* Order-in-Original No. 20-23/ST-II/WLH/2011 dated 30.11.2011 and Commissioner of GST & Central Excise (Appeals-III), Mumbai *vide* Order-in-Appeal No. Na/GST A-III/MUM/354/17-18 dated 15.01.2018, to the extent it is adversarial to the Assessee-Appellant, are hereby set aside. The appeal filed by Commissioner of CGST & Central Excise, Mumbai West bearing Service Tax appeal No. 87403 of 2018 is hereby dismissed.

12. Cross objection is disposed of accordingly.

(Order pronounced in the open court on 20.03.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)